

Rec'd
27-57
191-790

Record No. 3716

In the
Supreme Court of Appeals of Virginia
at Richmond

TRI-STATE COACH CORPORATION

v.

THOMAS C. STIDHAM, ADM'R, ETC.

FROM THE CIRCUIT COURT OF WISE COUNTY

RULE 5:12—BRIEFS.

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

M. B. WATTS, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

191 VA 790

NOTICE TO COUNSEL

This case probably will be called at the session of court to
be held OCT 1950

You will be advised later more definitely as to the date.

Print names of counsel on front cover of briefs.

M. B. WATTS, Clerk.

RULE 5:12—BRIEFS

§1. Form and Contents of Appellant's Brief. The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned, and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

§2. Form and Contents of Appellee's Brief. The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

§3. Reply Brief. The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

§4. Time of Filing. As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of the record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) The opening brief of the appellant shall be filed in the clerk's office within twenty-one days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. The brief of the appellee shall be filed in the clerk's office not less than twenty-one days, and the reply brief of the appellant not less than two days, before the first day of the session at which the case is to be heard.

(b) Unless the appellant's brief is filed at least forty-two days before the beginning of the next session of the Court, the case, in the absence of stipulation of counsel, will not be called at that session of the Court; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) Counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

§7. Effect of Noncompliance. If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.

CLERK
SUPREME COURT OF APPEALS



RICHMOND, VIRGINIA

IN THE
Supreme Court of Appeals of Virginia
AT RICHMOND.

Record No. 3716

VIRGINIA:

In the Supreme Court of Appeals held at the Court-Library Building in the City of Richmond on Tuesday the 14th day of March, 1950.

TRI-STATE COACH CORPORATION, Plaintiff in Error,
against

THOMAS C. STIDHAM, ADMINISTRATOR OF THE ES-
TATE OF LONNIE THOMAS STIDHAM, DE-
CEASED, Defendant in Error.

From Circuit Court of Wise County.

Upon the petition of Tri-State Coach Corporation a writ of error and *supersedeas* is awarded it to a judgment rendered by the Circuit Court of Wise county on the 31st day of October, 1949, in a certain notice of motion for judgment then therein depending wherein Thomas C. Stidham, administrator of the estate of Lonnie Thomas Stidham, deceased, was plaintiff and the said petitioner was defendant, upon the petitioner, or some one for him, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of four thousand dollars, with condition as the law directs.

RECORD**NOTICE.**

To: Mr. R. C. Shannon, Attorney of record for Thomas C. Stidham, Administrator of the Estate of Lonnie Thomas Stidham, Deceased, Plaintiff:

Please take notice that the undersigned will, on the 8th day of December, 1949, at the office of the Honorable George Morton, Judge of the Circuit Court of Wise County, Virginia, in Appalachia, Virginia, at ten o'clock, a. m., or as soon thereafter as practicable, tender to the said Judge, Certificate of Exceptions in the case of Thomas C. Stidham, Administrator of the Estate of Lonnie Thomas Stidham, Deceased, Plaintiff, v. Tri-State Coach Corporation, Defendant, copy of which is hereto attached, and apply to the said Court to sign and seal the same, and make it a part of the record in this case, and apply to the Clerk of the Circuit Court of Wise County for a transcript of the record in this case for the purpose of presenting said transcript to the Supreme Court of Appeals of Virginia, along with the petition for an appeal from a final decree of said Court rendered in said cause on the day of, 1949.

TRI-STATE COACH CORPORATION,
Defendant.

By: GREER, BOWEN, MULLINS &
WINSTON,

Counsel.

page 3a } Legal service of the foregoing notice is hereby
accepted.

This 8 day of December, 1949.

THOMAS C. STIDHAM,
Administrator of the Estate of
Lonnie Thomas Stidham, De-
ceased, Plaintiff,

By: R. C. SHANNON,
Counsel

page A 1 } Virginia:

In the Circuit Court of Wise County.

Thomas C. Stidham, Administrator of the Estate of Lonnie
Thomas Stidham, deceased, Plaintiff

v.

Tri-State Bus Corporation, Defendant.

NOTICE OF MOTION FOR JUDGMENT.

To: Tri-State Bus Corporation

You are hereby notified that on the 17th day of October, 1949, at 10 o'clock A. M., or as soon thereafter as the matter may be heard, at the Courthouse in Wise, Virginia, the undersigned Administrator of the Estate of Lonnie Thomas Stidham, deceased, for and on behalf of the said Estate and heirs of said Lonnie Thomas Stidham, deceased, will move the Circuit Court of Wise County, Virginia for a judgment against you in the sum of Fifteen Thousand (\$15,000.00) Dollars, for damages for the death of said Lonnie Thomas Stidham, as hereinafter set forth, to-wit:

That heretobefore to-wit on the 4th day of August, 1949, you were engaged in the business of and in the operation of buses, holding yourself out to the public to transport for hire such persons that might desire to ride thereon as a fare paying passenger; that your main office was then and is now located in Big Stone Gap, Wise County, Virginia.

That on the 4th day of August, 1949, the decedent, Lonnie Thomas Stidham, an infant of the age of three (3) years, was a fare paying passenger on your bus in the usual course of business from Exeter, Virginia to Keokee, Virginia, on State Route Number 68, for which Route you the defendant herein operated over and along as a common carrier of passengers.

That when said bus on the date aforesaid reached a point on said State Highway Number 68, Vesta Hold-
page A 2 } way signaled to the driver of said bus, who was then and there operating the same as your employee and agent, that she desired to alight or be discharged from said bus. That your agent and driver then and there stopped said bus for the purpose of discharging the said Vesta Holdway, who had the care, custody and control of the decedent herein, Lonnie Thomas Stidham, an infant three (3) years of age, who also intended to alight or be discharged from said bus.

That your said driver or agent stopped said bus and the decedent herein got out of said bus and walked to a point of four (4) or five (5) feet up the road and on the right side of said bus.

That it then and there became and was the duty of your driver and agent in stopping and starting the said bus to use the utmost care, diligence and foresight in the management thereof.

That notwithstanding the high degree of care that your agent and employee the driver of the said bus owed the said decedent herein in stopping and starting the said bus, he the said driver started the said bus and ran over and upon the said decedent, Lonnie Thomas Stidham, with the right wheel of the said bus from which the said Decedent, Lonnie Thomas Stidham, received injuries from which he died.

That the death of the said Lonnie Thomas Stidham, decedent, was due directly and proximately to the fault, carelessness, and negligence of the driver of the said bus in the following among other particulars:

1. That he the said driver started said bus without looking frontwards and first seeing that said bus could be started with safety.

page A 3 } 2. In the failure of the said driver to keep a proper and reasonable lookout.

3. In the negligence of the said driver in starting the said bus without giving any signal of his intention so to start said bus.

4. In the negligence of the said driver in starting said bus before the passengers, including the said Lonnie Thomas Stidham, decedent herein, had time to reach a place of safety.

5. In the negligence of the said driver in failing to observe that the infant decedent herein was standing in the road in front of said bus, which could have been done had the driver exercised ordinary care.

6. In the negligent and careless manner in which the driver operated said bus at the time and place of the accident.

7. In the negligence of the said driver in starting said bus without first seeing that the said Lonnie Thomas Stidham had reached a place of safety so as not to be injured by the starting of the said bus.

By reason of the negligence, carelessness and improper conduct aforesaid of the said defendant, the said decedent was seriously and fatally injured internally and otherwise, in and about his head, stomach and back as a result of which he died

instantly in Keokee, Lee County, Virginia, on the 4th day of August, 1949.

Wherefore, the undersigned administrator of the said decedent's estate is entitled to recover damages from the defendant for the death of the said decedent in the amount herein sued for.

page A 4 } Given under my hand this 8 day of September, 1949.

THOMAS C. STIDHAM,

Administrator of the Estate of
Lonnie Thomas Stidham, De-
ceased.

By R. C. SHANNON, P. Q.

RETURN:

Executed the within Notice on the Tri-State Bus Corporation on the 9th day of September, 1949, by delivering a true copy of the within Notice in writing to E. Frank Duncan in person in Big Stone Gap, Wise County, Virginia, at the principal office of the said Tri-State Bus Corporation. He, the said E. Frank Duncan, being manager of the said Tri-State Corporation and said summons being delivered to the said E. Frank Duncan, at the principal office at the said Corporation.

H. L. FLEMING, SWC

by FRANK LINKOUS

Deputy Sheriff.

"Filed Sep 12, 1949.

CHAS. I. FULLER, D. C."

page A 5 } In the Circuit Court of Wise County, Virginia.

Thomas C. Stidham, Administrator of the Estate of Lonnie
Stidham, deceased, Plaintiff

v.

Tri-State Coach Corporation, Defendant.

PLEA OF NOT GUILTY.

The said defendant, by its attorney, comes and says that it is not guilty of the premises in this action laid to its charge,

in manner and form as the plaintiff hath complained. And of this the said defendant puts itself upon the country.

TRI-STATE COACH CORPORATION
By Counsel.

FRED B. GREEAR
Counsel for Defendant

"Filed Oct. 27, 1949.

CHAS. I. FULLER, D. C."

page A 6 } Virginia:

Circuit Court of Wise County on Thursday the 27th day of October in the year of our Lord Nineteen Hundred and Forty-nine.

Present : The Honorable George Morton, Judge.

Thomas C. Stidham, Administrator of the estate of Lonnie Thomas Stidham, deceased, Plaintiff,

v.

Tri-State Bus Corporation, Defendant

NOTICE OF MOTION FOR JUDGMENT 19695.

This day came the plaintiff in person and by his attorney and the defendant appeared in Court by its attorney, thereupon the plaintiff, by counsel, moved the court to be allowed to amend his notice of motion by causing the name of the defendant therein to read "Tri-State Coach Corporation" instead of "Tri-State Bus Corporation" and the defendant Tri-State Coach Corporation, by its attorney, agreeing to said motion, the court doth sustain said motion, and it is ordered that the name Tri-State Coach Corporation be substituted for the name Tri-State Bus Corporation in plaintiff's notice of motion. And the defendant Tri-State Coach Corporation having filed its plea of not guilty, the plaintiff replied generally and issue was joined. Then came a panel of nine duly selected and duly qualified jurors, from which panel the plaintiff struck one and the defendant one, the remaining seven constituting the jury for the trial of the issue

joined in this case, to-wit: A. C. Reasor, Howard Broadwater, W. E. Helbert, Frank B. Johnson, J. C. Chandler, N. C. McConnell and A. J. Horton, who were duly sworn to well and truly try the issue joined and a true verdict render according to the evidence. And after hearing opening statement of counsel and the evidence and being instructed page A 7 } by the Court and hearing argument of counsel, retired to their room to consider of their verdict, and after sometime returned into court having found the following verdict, to-wit: "We the jury find \$3,000.00 damages for the plaintiff against the defendant. A. J. Horton, Foreman.

Thereupon the defendant, by counsel, moved the court to set aside the verdict of the jury so rendered against it and to grant it a new trial. And the defendant is directed to assign the grounds for its motion in writing and the court sets the said motion for argument on Oct. 31, 1949, at nine o'clock A. M.

GEORGE MORTON
Judge

page A 8 } Virginia:

Circuit Court of the County of Wise on Monday the 31st day of October in the year of our Lord Nineteen Hundred and Forty-nine.

Present: The Honorable George Morton, Judge.

Thomas C. Stidham, Administrator of the estate of Lonnie Thomas, Deceased, Plaintiff

v.

Tri-State Coach Corporation, Defendant.

NOTICE OF MOTION FOR JUDGMENT 19695.

This day came again the parties by their respective attorneys and the defendant herein having filed his motion to set aside the verdict of the jury rendered against it in this case and the grounds for said motion in writing, the said motion was argued by counsel. And the Court hearing said argument and being advised of its judgment, overrules the defendant's said motion, to which action of the court in overruling his motion, the defendant, by counsel, duly and properly excepted.

It is therefore considered by the Court that the plaintiff, Thomas C. Stidham, administrator of the estate of Lonnie

Thomas Stidham, deceased, do recover and have judgment against the defendant, Tri-State Coach Corporation, for the sum of Three Thousand (\$3,000.00) Dollars, with interest thereon to be computed at the rate of 6% per annum from the 27th day of October, 1949, till paid, together with his costs, by him, in this behalf expended.

And the defendant, expressing itself aggrieved by the action of the court in overruling its motion to set aside the verdict of the jury, and signifying its intention of applying to the Supreme Court of Appeals for a writ of error and *supersedeas* to said judgment, execution of said judgment page A 9 } ment is hereby suspended for sixty days, provided the defendant, or someone for it, execute a suspending bond in the penalty of \$300.00 conditioned and payable as the law directs, on or before the 25th day of November, 1949, with surety to be approved by the Clerk of this Court.

page 4 }

ORDER.

This day came the parties, by their attorneys, and the Defendant, by counsel, tendered to the Judge for signature a stenographic report of testimony and other incidents of the trial in the above-styled case and Certificate of Exceptions; and, it appearing to the Court, in writing, that R. C. Shannon, Esq., Attorney of record for the Plaintiff, has had reasonable notice that said stenographic report of testimony and other incidents of the trial and Certificate of Exceptions would be presented at this time and place to the Judge for signature, the said stenographic report of testimony and other incidents of the trial and Certificate of Exceptions, was on this the 8th day of December, 1949, within sixty days from the time final judgment herein was entered, received, signed and sealed by the Judge of this Court, and ordered to be made a part of the record in this case.

GEORGE MORTON (Seal)
Judge

page 5 } Virginia:

In the Circuit Court of Wise County.

Thomas C. Stidham, Administrator of the Estate of Lonnie Thomas Stidham, Deceased, Plaintiff,
v.
Tri-State Coach Corporation, Defendant.

NOTICE OF MOTION FOR JUDGMENT.
No. 19695.

Stenographic report of all the testimony, together with all motions, objections and exceptions on the part of the respective parties, the action of the Court in respect thereto, all the instructions offered, amended, granted and refused, and the objections and exceptions thereto, and all other incidents of the trial in the above-styled case, tried in the Circuit Court of Wise County, Virginia, on October 27, 1949, before the Honorable George Morton, Judge, and a Jury.

Appearances: R. C. Shannon, Esq., of Appalachia, Virginia, Counsel for the Plaintiff.

Fred B. Greear, Esq., of Norton, Virginia, Leslie Mullins, Esq., of Norton, Virginia, Counsel for the Defendant.

page 6 } The Jury was selected and sworn to try the case.

The witnesses for both sides were called, sworn and excluded.

Opening statements were made by Mr. Shannon on behalf of the Plaintiff, and by Mr. Greear on behalf of the Defendant.

THEREUPON, the following proceedings were had, to-wit:

Mr. Shannon: Your Honor, I want to call the driver as an adverse witness.

Mr. Greear: I object. He is no party to the suit. I believe the statute says "parties". They didn't sue the driver.

The Court: Let me see the statute. A corporation can only speak through its agents, of course.

Mr. Greear: He is not an agent. He is not an employee.

Mr. Shannon: He was at that time.

The Court: Let me see counsel in chambers.

Whereupon, the Court and Counsel retired to Chambers, where the following proceedings were had, to-wit:

Mr. Greear: We object to the introduction of Mr. Clark under cross examination and believe that if he is introduced by the plaintiff, he should be the plaintiff's witness and the plaintiff would be bound by his testimony, whatever it may

Walter C. Clark.

be. The witness Clark is not an employee of the
page 7 } Tri-State Coach Corporation; he has not been for
some time. In fact, he was discharged for insubor-
dination with his employer and if he is adverse at all, he is
adverse to the corporation at this time.

The plaintiff has four witnesses, all members of the de-
ceased's family, who were present and saw what happened
and there is no limit with reference to what he can show about
the accident and he does not need to put on Mr. Clark as an
adverse witness to prove his case, because he has eye-wit-
nesses who were there present and saw it, who are here and
attending court, sworn, ready to testify.

We think it would be prejudicial to the defendant to allow
him to place this man on the witness stand and cross-examine
him.

The Court: Have him come in here and I will ask him if
he refused to talk to you.

Mr. Shannon: Yes, sir.

The Court: Or you can ask him.

WALTER C. CLARK

having been first duly sworn, was examined and testified as
follows:

EXAMINATION.

By Mr. Shannon:

Q. I believe, Mr. Clark, I wanted to talk to you
page 8 } about the accident a while ago?

A. That's right.

Q. You told me you wouldn't talk to me?

A. I said I wouldn't make any statements out of court. I
would say what statements I wanted to make on the witness
stand.

Q. I believe I told you I just wanted to get the facts about
the case?

A. I didn't pay any attention to what you told me.

Q. At any rate, you refused to talk to me?

A. That's right.

The Court: You were driving the bus at the time it was
involved in this accident?

The Witness: Yes, sir.

The Court: And you refused to tell anything to the plain-
tiff's counsel until you were on the witness stand?

Walter C. Clark.

The Witness: That's right.

By Mr. Shannon:

Q. I believe you told me that you knew my position and I did represent the plaintiff, I believe I told you I represented the plaintiff, didn't I?

A. You told me that. I don't know as I spoke to you in those words.

Q. I believe you told me something to that effect, that you knew my interest in the case?

page 9 } A. No, I just said I think I told you, that is the words I think I said, I think, "I know who you are. Therefore, if you want any statement, you will get it on the witness stand."

Q. I believe I told you I did represent the plaintiff?

A. You did, yes.

Mr. Shannon: That is all.

The Court: That is all, Mr. Clark, thank you. Well, it seems to me if he wants to put him on as an adverse witness, he can do it.

Mr. Shannon: I want those questions in the record.

The Court: Yes, sir, that goes in the record.

Mr. Greear: We except to the ruling of the Court.

WHEREUPON, the Court and Counsel returned into Court and the following evidence was introduced on behalf of the Plaintiff:

The Court: All right, gentlemen, you may proceed.

Mr. Shannon: As an adverse witness?

The Court: Yes.

WALTER C. CLARK

called as an adverse witness, was sworn and testified as follows:

DIRECT EXAMINATION.

By Mr. Shannon:

page 10 } Q. What is your name?

A. Walter Clark.

Q. Walter Clark?

A. Yes.

Q. Where do you live Mr. Clark?

A. Appalachia.

Walter C. Clark.

Q. You are not now employed by the Tri-State Bus Company?

A. No, sir.

Q. How long has it been since you worked for them?

A. Since the 15th of last March.

Q. Mr. Clark, I believe you were the driver of the bus when an accident happened near Keokee, in which the infant Lonnie Stidham was killed, were you not?

A. Yes, sir.

Q. Who signaled you to stop that bus?

A. What do you mean?

Q. Well, how come you to stop the bus at the time?

A. Someone pulled the buzzer on the bus.

Q. Do you know who that was?

A. No, sir.

Q. Did you see the infant Stidham get off the bus?

A. I did.

Q. Who was with him when he got off the bus?

page 11 } A. This little girl, I forget her name.

Q. Who got off of the bus first?

A. Shirley Holdway.

Q. Was that the little girl?

A. That was the little girl.

Q. About nine years old?

A. Yes.

Q. How long after Shirley Holdway got off until the infant got off?

A. He followed on off behind her.

Q. Did the infant have hold of her hand?

A. I couldn't say.

Q. You don't know that?

A. No, sir.

Q. How long after the infant got off until Vesta Holdway, the grandmother got off?

A. Oh, I wouldn't know in minutes, because she was asking me the bus schedule there and, therefore, I wouldn't—I couldn't say the time at all.

Q. They were about all together though, weren't they, when they got off?

A. No, the girl and little boy, they got off first. Mrs. Holdway, she started to get off and she turned around in the doorway asking me the schedules on that bus coming
page 12 } back through, said she was going over to a garden,
I believe she said, and she wanted to catch that bus
back into Exeter.

Walter C. Clark.

Q. Did you ever see the child after it got off the bus?

A. No, sir.

Q. Did you ever look for the child after it got off the bus?

A. Not particularly looked for the child; no, sir.

Q. Did you give any signal of your intention to start before you started that bus?

A. No more than just started out after the passengers completely leave the bus.

Q. Did you give a hand signal or anything?

A. No, sir.

Q. Which way were you looking when you started the bus?

A. Well, I imagine I would be looking forward to see if the road was clear. Of course, I look out to the side to see if the road was clear before I pull out in the highway.

Q. You imagine you were, but were you?

A. I would say I was, yes, sir.

Q. What would make you say you were?

A. Because I have always had that habit.

Q. You have always had that habit?

page 13 } A. Yes, sir.

Q. How far did you drive until someone screamed?

A. Well, according to the marks on the road, I would say from the time that I made my first stop until I let the passengers off and until I started and stopped the last time, after the scream, I would say it was between 28 and 36 inches.

Q. Now you are going by the marks in the road, aren't you?

A. Yes, sir.

Q. You say you never did see the child after the child got off the bus?

A. Not until we got it out from under the bus.

Q. Did you look for the child to see where it was when you started that bus?

A. No, I always looked at my door to see my doors are clear and there was nothing in front of me before starting out.

Q. Didn't you look with reference to this child?

A. No, sir.

Q. You did not?

A. No, sir.

Q. I believe you pulled up there and as quick as Vesta got off when she was asking you those questions, you put it in gear and started on out?

page 14 } A. No, sir.

Q. How did it happen?

Walter C. Clark.

A. Well, I don't know how long a time elapsed there or I don't know what delayed the time, but after this girl and the kid got off the bus, they went around the bus, I seen them go around to the back part of the bus, when they got off, they stepped off in that direction. I don't know if they turned around while we was having our conversation or whether they made a complete turn around the bus, but she stood in the doorway asking me the schedule on that bus coming back and I explained the schedule to her and she left out the door of the bus, walked around the door of the bus to the back way of it and when she screamed, she was on the opposite side of it, going in the direction of Keokee Depot. When she screamed it froze me in my tracks, whenever she put out that scream, I just stopped quick, didn't seem like I more than let out on the clutch until she screamed.

Q. You say the child got off and walked around that way?

A. The last I seen of them, they got off of the door. The bus was headed just like I am facing you, toward Calvin. They got off the door on the right, which was the only way to get off the bus. The last I seen them, they stepped off the bus. I did not notice which way the kid went, but
page 15 } the girl turned in the direction going toward the rear of the bus.

Q. I believe you stated they went in the direction of the right and you didn't see the child any more?

A. I told you I didn't see that child after it got off the bus.

Q. You didn't look for it?

A. No, sir, we are not in the habit of doing that for the simple reason we look ahead in pulling out and see that our doors are clear before starting up.

Q. Usually don't you see that passengers are in the clear before you start the bus?

A. To see if they are in clear of the door. We know they are not in front of the bus.

Q. That includes children?

A. We don't get out and look around the bus to see there is nobody around it.

Q. That includes children too?

A. Yes, sir.

Q. Yet you know a child might run in front of the bus, don't you?

A. Well, it is not—I wouldn't think so if they are with someone else. If the kid had been by itself, I guess I would have noticed the kid more closely.

Walter C. Clark.

- page 16 } Q. The kid was not ahold of anyone, was it?
 A. I couldn't say that.
 Q. Well, who was the child with, Vesta or the girl?
 A. I told you, with the girl.
 Q. They were all getting off there right together?
 A. I explained that.
 Q. Well, were they?
 A. The girl and the kid got off first. Vesta stopped in the doorway.
 Q. Well, before she stopped in the doorway, were they all getting off together, that is nearly together?
 A. They were going down the aisle together; yes, sir.
 Q. And then Vesta stopped and asked you some questions?
 A. That's right.
 Q. You started to answer those questions and did answer them?
 A. I did.
 Q. And then you put your bus in gear and started out without looking any more for the child?
 A. I explained to you that I looked to see if my doors were clear before I started out. I also looked to see if there was oncoming traffic meeting me before I go on the highway. There was nothing in front of me in my vision.
 Q. I believe this bus is a rear engine job?
 page 17 } A. That's right.
 Q. You have a better view in front with the rear engine job?
 A. Yes, sir.
 Q. You can see right down to the ground?
 A. Not direct, no, sir.
 Q. About how far can you see?
 A. Oh, I guess—I don't know, I never had thought about it that way, took any view on it.
 Q. Well, you have driven the bus?
 A. That's right.
 Q. About how far would you say? You are better acquainted with it than the Jury.
 A. I guess about two or three foot in front of you.

Mr. Shannon: That's all.

Walter C. Clark.

CROSS EXAMINATION.

By Mr. Greear:

Q. Mr. Clark, as I understand it, you were driving along and had these people as passengers on the bus?

A. Yes, sir.

Q. Were there any other passengers on the bus?

A. There were—besides Mrs. Holdway and the girl and the kid?

Q. Yes.

page 18 } A. Yes, sir.

Q. Who were they?

A. Worley Stidham, Tommy C. Stidham, the child's father, and J. T. Thomas.

Q. That is the child's father and I believe the other is the grandfather?

A. Yes, sir.

Q. His father and grandfather were on there too?

A. Yes, sir.

Q. Did they get off when they pulled the cord there?

A. No, sir.

Q. They remained on the bus?

A. Yes, sir.

Q. Where were they sitting?

A. I couldn't say.

Q. At the time that Mrs. Holdway screamed, when she saw the child under the bus, which one got off the bus first, you or the father or grandfather?

A. No, they got off first, because I hadn't closed the door on my bus and when I come to a stop, they all unloaded before I had time to cut the motor off, take care of the emergency brake. I believe they were all off the bus before I got off of it.

Q. I will ask you whether or not at the time you
page 19 } stopped and were talking to Mrs. Holdway, the engine on the bus died and had to be started again?

A. Well, it seems like it did. I won't say for certain about that. It has been some time since the accident.

Mr. Shannon: Your Honor, I object. I put him on as an adverse witness. He can cross-examine. I believe he can cross-examine, but I don't believe he can go ahead and lead.

The Court: You say he can or can't?

Mr. Shannon: I say he can.

Walter C. Clark.

The Court: If he can cross-examine, he can ask him leading questions. Proceed.

Q. Mr. Clark—

A. Yes, sir.

Q. Did they get off when they pulled the cord there? about the time the scream happened?

A. Yes, sir.

Q. As to where she was?

A. Yes, sir.

Q. Where was she?

A. Well, I would say she was around 100 feet, between 100 to 120 feet on the opposite side of the road, over toward the Keokee Depot.

Q. Is there a bridge on that little road that leads page 20 } down to the Depot?

A. Yes, sir.

Q. Where was she with reference to the bridge?

A. She was right out on that bridge.

Q. She was right out on that bridge?

A. Yes, sir.

Q. Is that on the road that is traveled by the bus or another road?

A. No, that is a side road.

Q. A side road?

A. Yes, sir.

Q. Did you know anything about where Mrs. Holdway's garden was located, which side of the road it was on or such as that?

A. No, sir.

Q. Did that bus on that run have any particular place to stop along there or did it just stop wherever people wanted to get off?

A. Stopped wherever they pulled the cord and wanted off.

Q. What was the condition of the road that morning?

A. It was dry.

Q. What was the condition of the weather?

A. Fair.

page 21 } Q. What part of the road did you let them off, when they stepped off of the bus, where did they step off on, what part of the road?

A. To the right of the road.

Q. Did they step off on to the shoulder?

A. Yes, sir.

Q. Was that a smooth shoulder there?

Walter C. Clark.

A. Yes, sir.

Q. Was there plenty of room for them to walk along the shoulder beside the bus?

A. Yes, sir.

Q. I believe you say you so noticed the child get off and go back towards the back of the bus?

A. No, I wouldn't say which way the child—the baby you are talking about?

Q. The little girl.

A. The little girl, yes, sir.

Q. Do you remember if she held his hand to get down the steps?

A. No, sir, I don't.

Q. Does that bus have steps?

A. It does.

Q. How old was this child, if you know?

A. Which one? The smallest one?

page 22 } Q. The baby.

A. Well, at the time of the accident I think the child's father told me it was four years of age, but I learned later they said the child was younger than that.

Q. Younger than that?

A. Yes, sir.

Q. Now when Mrs. Holdway finished talking to you and stepped off, which way did she walk?

A. To the back of the bus.

Q. At that time when she got off, what did she say, anything about the child then?

A. No, sir.

Q. Where do you say she was when she hollered to you?

A. When she screamed and I turned around, well, I would say she was around 20 to 30 feet on the opposite side of the bus, on the opposite side of the highway.

Q. Where was she up to, near the front of the bus, middle or back?

A. More to the middle I would say.

Q. More to the middle of the bus?

A. Yes, sir.

Q. Did your bus remain in that position until the officers came and investigated the accident?

A. Yes, sir.

page 23 } Q. It didn't move at all when Trooper Pierce was there?

A. No, sir.

Q. Which wheel struck the child?

Walter C. Clark.

A. The right front, inside.

Q. You mean inside?

A. Inside of the wheel.

Q. How could you tell it was the inside part of the tire that struck it?

A. It showed a mark on the tire, there was hair there, and also it was damp like there was blood or something on that tire where it had hit the kid.

Q. Did that dampness and the signs of the injury to the child extend to the outside of the tire?

A. Yes, sir.

Q. Or just to the inside?

A. No, to the outside, like this was your tire here (indicating) and like it just was headed toward the jury there.

Q. I don't believe you understood my question. What I was getting at is whether or not it extended to the side of the tire that was toward the door or whether it was all on the side of the tire toward the other wheel?

A. That's right, the inside toward the other wheel.

Q. Toward the other wheel?

page 24 } A. Yes.

Q. That is the only place there was any sign on the tire?

A. Yes, sir.

Q. At the time that this happened, did you talk there to the other members of the family who were on the bus, soon after it happened?

A. After it happened?

Q. Yes.

A. To the child's grandfather I believe was all.

Q. I will ask you if they told you there there was no way you could have helped it?

A. They did.

Mr. Shannon: I object to that question.

The Court: Objection sustained.

Q. What statements did they make to you with reference to whether they blamed you or whether you could have helped it?

Mr. Shannon: Your Honor, I object to that.

The Court: Objection sustained. He can tell if they made any statements to him as to how the accident happened.

Walter C. Clark.

Q. Did they make any statements you?

A. The child's grandfather, Worley Stidham, page 25 } told me, "Clark, I don't want you to feel like we are against you on this."

Mr. Shannon: I object to that. In other words, he is not a party to the suit. He has nothing to do with the suit.

The Court: He can tell what the conditions were there or anything like that.

Mr. Greear: I think that would be *res gestae*, right at the time it happened, while all the excitement was on.

The Court: Any thing he said to him as to how the accident happened would be *res gestae*, but what he is stating here might be an opinion of this man, he was not holding him responsible, as the grandfather. He doesn't have any interest in the case as I know of, except his personal opinion.

Mr. Greear: We except to the ruling of the Court.

The Court: I will sustain the objection.

Q. Now, Mr. Clark, come up here to the jury just a minute. I show you a picture which shows the road and ask you if that is a true representation of that roadway and side road?

A. Yes, sir, it is.

page 26 } Mr. Greear: We desire to introduce this as Exhibit No. 1.

(The picture was marked and filed Exhibit No. 1, Witness Walter C. Clark.)

Q. Will you show us on this now the Keokee Depot?

A. This little building here, is just an open station where the old Keokee Depot was. In other words, it is just a flag station, just to get in out of the weather.

Q. Where is the bridge that you said the girl was on when the accident occurred?

A. Back in here (indicating).

Q. Where had you stopped your bus?

A. Along about here (indicating).

Q. I show you another picture which shows that intersection up there close, is that a true representation of the road there?

A. It is.

Mr. Greear: We desire to introduce that as Exhibit No. 2.

Walter C. Clark.

(The picture was marked and filed Exhibit No. 2, Witness Walter C. Clark.)

Q. That shows the intersection where you stopped your bus and the side road turning off?

A. Yes.

page 27 } Q. I show you another picture of the front end of the bus of the Tri-State Coach Corporation and ask you if that is the bus you were driving that morning?

A. Well, that I couldn't say. I don't see the number on that bus there, but the numbers are on the corner but that is the same type of bus as I was driving, but the bus I was driving was No. 112.

Q. You don't know whether that is 112?

A. I don't know whether that is 112.

Q. You don't remember the license number?

A. No, sir, I don't.

Q. That is the same bus?

A. Same type bus, yes, same thing.

Q. Is that the way the doors opened on it?

A. That's right.

Q. Is that the way the doors were open?

A. Yes, sir.

Q. Point out on that picture what part of the wheel showed the signs of hitting the child?

A. Right on the inside of this wheel, over on the side facing the inside of the bus, the inside of this front tire.

Mr. Greear: We introduce that as Exhibit No. 3.

page 28 } (The picture was marked and filed Exhibit No. 3, witness Walter C. Clark.)

Mr. Greear: I believe that's all, Mr. Clark.

RE-DIRECT EXAMINATION.

By Mr. Shannon:

Mr. Greear: One other question. About how wide is the macadam there, Mr. Clark?

The Witness: I would say around 15 to 18 foot, approximately 15 foot.

Mr. Greear: Were there any other vehicles on the road around the bus that morning at all?

The Witness: No, sir.

Walter C. Clark.

Mr. Greear: Any people in sight when you looked down the road the way you were going?

The Witness: No, sir, not as I know, sir.

By Mr. Shannon:

Q. Mr. Clark, now this bus here is a very low bus, isn't it, that is the front end of it is a very underslung proposition?

A. Yes.

Q. How high would you say it is?

A. I would say about—well, I can't hardly say exact, maybe 12, fourteen inches.

Q. Twelve or fourteen inches high?

A. Yes.

page 29 } Q. In other words, a kid couldn't *harly* get back under the bus?

A. Oh, yes.

Q. It would have to get down and crawl?

A. Yes, couldn't walk in under it.

Q. You tell the Jury that the blood was on that side of the wheel?

A. Yes, sir, back part of it.

Q. Of course, the wheel turned over, but it was on the inside of it?

A. That's right.

Q. I believe you also told me that you didn't know about how far the defendant pulled from the time you had started until you stopped?

A. I told you I didn't know how far?

Q. Yes.

A. I think I made the statement I went approximately 28 to 36 inches.

Q. That is from the time you started until you stopped?

A. Until I stopped, yes, sir.

Q. You based that on what?

A. Marks on the road.

Q. Could you tell where the bus had stopped by the marks on the road?

page 30 } A. That is what I would have took it for, the way the bus showed that there after I pulled it up, there was black spots on the road, on the right rear wheels where you see cars stop, one wheel brakes quicker than the other, make a mark on the road. That is the type mark on the road with those dual wheels and on the other side it was not that way. It was just on the right rear wheel.

Q. The right rear wheel was off the pavement?

Walter C. Clark.

A. No, sir.

Q. In other words, you stopped on the pavement?

A. Yes, over as far as I could get.

Q. Of course, you came to a stop gradually and you started out slowly when you started?

A. I would think so, yes.

Q. You might have driven on some distance further than that?

A. What do you mean?

Q. Well, I mean you are basing as to how far you went there before you hit this child merely on what you examined there after that, aren't you?

A. That's right.

Q. You might have driven some few feet further than that, might you not?

A. Well, I don't believe my judgment is that bad.

Q. You believe your judgment is not that bad?
page 31 } A. I did not have anything to measure it with,
no tape line or nothing there.

Q. You had dual wheels on this bus?

A. That's right.

Q. You weren't loaded, were you, you didn't have a heavy load, did you?

A. No, sir.

Q. The road was dry, wasn't it?

A. Yes, sir.

Q. Why would you account for the black marks?

A. Well, it was where one wheel, the brake took on one wheel quicker than it did the rest. In other words, it was not all proportionately adjusted together. If they had been, there wouldn't have been any marks on the road at all, but one wheel grabbed the pavement before the others.

Q. Do you recall that one wheel did grab the pavement before the others?

A. The mark on the road showed that.

Q. That is just a matter of your opinion, but you were driving the bus. As a matter of fact, did one brake take before the other?

A. That, I couldn't say.

Q. Well, you had been driving that bus how long?

A. Well, I couldn't say whether I drove it any
page 32 } other other than that shift that I was on, because
they have a habit of changing buses on that shift
very often.

Q. Very often?

Walter C. Clark.

A. Yes, sir.

Q. Were the brakes out of adjustment on this bus that you noticed?

A. No, not no extent, no, sir, no more than just one seemed like it took quicker than the other by the marks on the road.

Q. One seemed like it took quicker than the other by the marks on the road?

A. Yes, sir.

Q. Did you ever notice that any other time?

A. I never jammed the road at any other time. I had no reason to.

Q. You have driven a bus a lot and you can tell one will screech if one takes quicker, the wheels will slide, won't they?

A. I would think so. I don't know about the screeching part.

Q. If they slide on the pavement, they usually make a noise?

A. They do sometimes if you are making a lot
page 33 } of speed, I guess, come to a sudden stop, but just
at a slow speed, I don't see where it would have
any great force there to make a noise.

Q. How many black spots were on the road to the right there where you are talking about?

A. Two.

Q. When did you examine it?

A. Right after the accident.

Q. Where was the child when it was examined?

A. They done brought it out.

Q. How long?

A. Oh, I couldn't say how long it was after they held the inquest there.

Q. Why did you look for black marks in the road?

A. I was trying to picture in my opinion whether I was at fault in any way to kill that kid.

Q. In other words, you started then to investigate after the child had been gone about a half hour—how long had the child been gone?

A. I couldn't say.

Q. What made you think it was your fault?

A. Sir?

Q. What made you think it was your fault?

A. I didn't say it was my fault.

page 34 } Mr. Greear: I object.

The Witness: I have children the same as any-

Walter C. Clark.

body else. I have got a kid just the same size as that kid. I got feelings for them.

Q. Is that the reason, because you had a great feeling, you got out and looked for this skid mark?

A. I didn't especially look for no skid mark, no, sir. I was measuring that there at first in my own mind, how it happened, how come that happened.

Q. In other words, you were paying so little attention, you really didn't know how it happened, did you?

A. There was no one, no, sir, knows how it happened.

Q. That includes you, doesn't it?

A. That's right.

Q. You don't know, do you?

A. No, sir.

Q. You don't know but what that child was not out eight feet in front of you?

A. I do know it was not out eight feet in front of me.

Q. You don't know that he was not out four or five do you?

A. I know I didn't see him in front of the bus.

Q. You know you didn't look, did you?

A. I did look, in front of the bus, but not especially looking for the kid.

Q. You did look in front of the bus but not especially looking for the kid?

A. That's right.

Q. When you looked, did you look up the road to see if anything was coming?

A. I always do.

Q. Did you this time?

A. Certainly.

Q. Did you look down?

A. Why would I be looking down?

Q. Why would you?

A. That's right.

Q. You didn't look down to see if there was anything coming?

A. I don't know whether I did or didn't.

Q. You don't know whether you did or didn't?

A. No, sir.

Q. You won't tell the Jury that you looked down there close to this bus, as closely as you could see, if anything was in front of you?

A. No, sir.

Walter C. Clark.

Q. Yet you knew that child had got out right there didn't you?
page 36 } A. I did.

Mr. Shannon: That's all.

RE-CROSS EXAMINATION.

By Mr. Greear:

Q. Mr. Clark, as I understand you, you didn't make any particular search for the child?

A. That's right.

Q. Did you notice anything that warned you to make a search for the child?

A. No, sir.

Mr. Shannon: I object to that. Reason enough is that the child was there. He said he knew it was there.

Q. He didn't know it was there.

The Court: Objection overruled.

Mr. Shannon: It had gotten off there.

Q. You did look before you moved the bus at all?

A. Yes, sir.

Q. You saw nothing?

A. Never; no, sir.

Q. Nothing that would interfere with the movement of the bus?

A. That is right.

Q. Were your doors clear, your door clear at the side?

A. Yes, sir.

page 37 } Q. How far did you sit from that door?

A. I will say it was about, I think the bus was about eight foot inside, eight foot wide, something like that. I was on the opposite side.

Q. Right across from the door?

A. Yes, sir, right straight across from the door.

Q. How close was your seat to the windshield?

A. I imagine about between two and three foot. I would say at least two foot.

Q. From the windshield?

A. Yes, sir.

Walter C. Clark.

Q. Now does that bus slope in at the bottom, does this bottom part slope in and the windshield stick out higher?

A. No, sir.

Q. Just about straight up and down?

A. Yes, sir.

Q. I believe you said sitting there you think you could see within two to three feet in front of the bumper?

A. That's right.

Q. You saw nothing there?

A. That's right.

Q. When Mrs. Holdway got off of the bus, could she see all around the front of it there?

page 38 } A. Yes, sir, I imagine she could.

Q. Did she say anything to you there about the child?

A. No, sir.

Mr. Greear: I believe that's all.

RE-DIRECT EXAMINATION.

By Mr. Shannon:

Q. How much time did you give Mrs. Holdway to look for the child?

A. Well, I didn't particularly give her any time, looking for the child, because I didn't even have the child in my mind. The little girl went off with the child.

Q. They went off together, didn't they? They were all walking down the aisle together?

A. Yes, but Mrs. Holdway held up in the bus, where the little girl got off.

Q. To ask you something?

A. Yes, sir.

Q. The next thing you thought about the little child—

A. (Interposing) I didn't give the child a thought. Whenever she screamed, I still didn't give the child a thought. I didn't know what it was, it just shocked me when she screamed. I didn't give the child another thought.

Q. You could see two or three feet ahead of you, but you don't know whether you looked down there, did you?

A. That's right.

page 39 } Mr. Shannon: That's all.

J. T. Thomas.

RE-CROSS EXAMINATION.

By Mr. Greear:

Q. Mr. Clark, had the child been moved at all when you got off the bus?

A. No, sir.

Q. I will ask you which way his feet were extending whether they were under the bus or toward the outside?

A. They were under the bus, extending toward the rear of the bus.

Q. Under the bus and extending back toward the rear?

A. Yes, sir.

Q. What part of the child's body had been struck with the wheel?

A. Back of its head.

Q. Any other part?

A. No, sir.

Mr. Greear: That's all.

Mr. Shannon: That is all.

(Witness excused.)

page 40 }

J. T. THOMAS

the next witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Shannon:

Q. What is your name?

A. J. T. Thomas.

Q. How old are you?

A. Twenty-two.

Q. Where do you live?

A. Exeter.

Q. How long have you lived there?

A. Two years.

Q. I believe you are a brother-in-law to Thomas Stidham?

A. Half brother-in-law.

Q. You did marry his half sister, I believe?

A. Yes, sir.

Q. You are married yourself?

A. Yes, sir.

Q. I mean you live at Exeter?

J. T. Thomas.

A. Yes, sir.

Q. I believe at this particular occasion that this accident happened, you were on the bus?

page 41 } A. Yes, sir.

Q. Go ahead and tell the Jury there just what happened.

A. Just what happened. Well, I was on the bus going to work, me and Tommy and my father-in-law. Well, when this woman, Mrs. Holdway, she must have rung the bell to get off. Well, the bus stopped near the Keokee Depot. I guess that you all know where it is though. And when she stopped the bus to get off, well the girl got off first, Shirley Holdway. Well, when she got off, the little boy followed her. Well, then this woman, she started to get off. Mrs. Holdway, she got on the second step down, she turned around and she said, "What time will the next bus be back?" He said, "About in 30 minutes." She said, "Well, I can't catch that one. What time will the next one be back?" He said at ten-thirty.

Then when I got off the bus, I was the last one got off, why—

Q. Well now, just before that, I will ask you this, were they all getting off more or less together or—

Mr. Greear: I object to that as calling for a conclusion.

The Court: It is leading. Objection sustained.

Q. How were they getting off the bus, Vesta and the little girl and the little boy?

page 42 } A. Well, she was right—she might have been a minute behind him.

Q. Go ahead and tell just what happened.

A. Well, when I got off the bus, Mr. Stidham had his kid and he took it around there and Mr. Clark went and got a bus seat and laid the kid down on that.

Q. What happened after the parties were discharged there, what did the bus do, if anything?

A. After the parties?

Q. That is after the girl and Vesta Holdway and the little boy got off, did the bus just stand there?

A. No, he pulled out as quick as she stepped off, he pulled out.

Q. Well, how far did the bus go in your opinion—

A. Well, he went—

Q. —until you heard some screams or something?

A. Well, he went between five to ten feet. I couldn't say for sure, between that somewhere.

J. T. Thomas.

Q. Well, what was the first thing that attracted your attention that anything was wrong?

A. Well, my father-in-law went out the door.

Q. Did you hear anything? Why did your father-in-law go out the door, if you know?

A. Well, I was talking and I was not paying no page 43 } attention when he went out the door.

Q. Did you hear anybody scream?

A. Well, it seemed like I did. I wouldn't say for sure I did.

Q. Did you ever get out of the bus?

A. Yes, I got out of the bus.

Q. Why did you get out?

A. I followed the bus driver out. Tommy, well, his father was out first and Tommy next and then the bus driver and then me. I was the last one.

Q. What did you see when you got out of the bus?

A. My father-in-law had that baby up in his arms and its head was bleeding. Tommy started running to get the doctor, after they laid it out, and I went with him. We went out and got a fellow and he said, "Let's take it to the doctor." And they said, "No, it is done dead."

Now go ahead and ask me all you want to.

Q. Now about where was Vesta Holdway when the bus started?

A. About where she was at? Well, she just got off.

Q. How long had she been off?

A. Well, she just got off the bus and must have started around the bus, I wouldn't say for sure, but she just got off the bus when it started out. I never did pay much attention.

page 44 } Q. Did you see the driver give any signal?

A. No, sir. He might have given a signal with the light, but I didn't see any.

Q. You didn't see any?

A. No, sir.

Mr. Shannon: Your witness.

CROSS EXAMINATION.

By Mr. Greear:

Q. Really, Thomas, you don't know what happened or how it happened, do you?

A. How it happened?

J. T. Thomas.

Q. Yes.

A. Well, really, I don't know how it happened for sure.

Q. Because you were not expecting any such thing?

A. No, I was not expecting it.

Q. The girl and the little boy had gotten off and gone on and you didn't pay any attention to where they went?

A. No, I didn't pay any attention to where they went.

Q. Then you heard Mrs. Holdway talking about the bus schedules when she got off?

A. Yes.

Q. She stopped on those steps there?

A. Yes, sir.

Q. Then after she got off, why you were talking
page 45 } to somebody, and the bus I believe it killed its engine, had to start its engine again?

A. No, sir, he didn't kill his engine.

Q. Didn't you know his engine died?

A. Well, he pulled out when she stepped off.

Q. He started the engine though before he pulled off?

A. No, the engine was running. He just let his clutch out and went on.

Q. He had to put it in gear?

A. Well no, he just pushed in his clutch.

Q. You never paid any attention to that, in fact, you didn't hear the scream?

A. Well, the fact is I did not say I heard her scream.

Q. You didn't know anything had happened?

A. Until I got off the bus.

Q. Until your father-in-law got off the bus?

A. What?

Q. When your father-in-law ran off the bus, he jumped up and ran off?

A. Yes, sir.

Q. That is what attracted your attention?

A. Yes and I jumped off and followed him.

Q. When you got off, he had gotten the child out from under the bus?

page 46 } A. Yes, sir.

Q. And so you got off because you hadn't been paying any attention, you didn't know what was going on?

A. I knowed when the woman got off and the kid and girl though.

Q. But you didn't know anything about the accident?

A. I knowed when the bus started.

Vesta Holdway.

Q. You didn't know where Vesta was when she screamed because you didn't hear her scream?

A. No, sir.

Q. You didn't know where the girl and boy were?

A. I seen them get off and I know the bus started immediately after the woman stepped her foot off.

Q. You didn't know that?

A. Yes, sir.

Q. She was clear on the other side of the bus when she screamed?

A. No, I wouldn't say she was on the other side of the bus.

Q. You don't know, do you?

A. I am just telling what I know.

Mr. Greear: You don't know. You don't know where she was. That's all.

(Witness excused.)

page 47 }

VESTA HOLDWAY

the next witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Shannon:

Q. I believe your name is Vesta Holdway?

A. Yes, sir.

Q. You are the grandmother of Thomas Stidham, the deceased?

A. Lonnie, yes.

Q. How old was the child?

A. He was two years and a half old.

Q. Where do you live?

A. Exeter.

Q. How near do you live to its father?

A. Just a little way, I don't know.

Q. In the same camp?

A. Yes.

Q. Just a few houses?

A. Yes.

Q. I believe you live in one row and him in another row?

A. Yes.

Vesta Holdway.

Q. Did you formerly live up near Calvin? Do you have a garden up near Keokee?

page 48 } A. Yes, sir, I was going to the garden.

Q. Do you have a garden up there?

A. Yes.

Q. Did you used to live up there?

A. I was raised up there.

Q. You planted that garden up there, even though you lived at Exeter?

A. Yes, sir.

Q. Who was in charge of Lonnie Stidham at this time when you went up there?

A. He was with me.

Q. With you?

A. Yes.

Q. I believe you had another little girl along?

A. My daughter was with me.

Q. I believe she is in school today?

A. Yes.

Q. Now at this particular time the accident happened, go ahead and tell just what happened.

A. Well, when we come to the place there where I got off, the kid went out in front of me and I stopped at the door and asked him what time did the next bus come back.

Q. You say the kid went off in front of you. Tell the Jury about what you mean "in front of you". How far

page 49 } in front of you?

A. No, he just stepped off the bus while I was talking.

Q. Who got off first?

A. The little girl got off and run across the road.

Q. Where was the little baby when she got off?

A. He was coming off in front of me. I had him.

Q. How far ahead of the little boy was the little girl?

A. Oh, she was a good ways.

Q. Did she kind of run off?

A. She run out. She got off the bus. She always does run where my garden is. My sister lives there and she was running out there where the kids were.

Q. I believe you had charge of this little boy here?

A. Yes, sir, I had him.

Q. Who pulled the cord to stop the bus?

A. I believe J. T. or Tommy, one. I don't know which one, but one of those men did. I was sitting on this side and the

Vesta Holdway.

little boy was sitting on this side and the cord was next to me.

Q. The little boy was sitting next to you?

A. Yes.

Q. Go ahead and tell what you know about it.

A. Well, when I started to get off the bus, I
page 50 } asked the driver what time would the next bus run.

He said it would be thirty minutes. I said I couldn't get back that soon. I said, "What time will the next one run?" He said—I believe he said nine-thirty.

Q. Where were you when you were asking those questions?

A. Right there.

Q. Where were you in the bus?

A. Standing in the door, fixing to go off.

Q. Did you stop?

A. I started off the bus and turned around. I might have been on the second step.

Q. Where were you when you turned around?

A. I was in the door, on the second step when—I really don't know, but I was going off the bus.

Q. You turned around and asked what?

A. What time the bus would come back and he said this bus would go back in thirty minutes, the bus I was on. I said, "I couldn't catch that one." I asked him what time would the next one run and he said nine-thirty. I stepped off the bus and by the time I stepped off the bus on the ground the man pulled out and the baby screamed.

Q. What man?

A. That bus driver, Clark.

Q. Then what happened?

A. Well, I reckon I screamed. That is the last
page 51 } I ever remembered. I don't know no more about it.

Q. Did you see Lonnie Stidham there after that?

A. I seen him after that, picked him up.

Q. How soon did the bus start when you stepped your foot on the ground?

A. I just had stepped down when he pulled out. He didn't give me time to see where the kid was at or nothing, he just pulled out.

Q. Did you know where the kid was?

A. No.

Q. Did you think it was with the girl?

A. I didn't know. He screamed about the time he pulled the bus out.

Q. I believe the little girl had run away on?

Vesta Holdway.

A. She was, you know, it is a pretty good ways from where the bus stops to the railroad, and she was almost to the railroad there.

Q. You knew the little child was not with her, didn't you?

A. Yes.

Q. I believe you had kept this child the greater part or portion of the time?

A. Yes, he stayed with me most of the time.

page 52 } Q. I believe after it was born in the hospital, your daughter came back to your home?

A. Yes, she did. We lived side by side when the kid was first born and he just took up with me and stayed with me.

Q. How many other children does Thomas Stidham have?

A. One.

Q. How old is it?

A. He will be two years old in December.

Q. This was a little boy, I believe?

A. Yes, they are both boys.

Q. Was this boy healthy, a normal child?

A. The one that was killed?

Q. Yes.

A. Yes, sir.

Mr. Shannon: That's all.

CROSS EXAMINATION.

By Mr. Greear:

Q. Vesta, this boy lived with you most of the time?

A. Most of the time.

Q. He stayed with you about every night?

A. No, he didn't stay every night, but he stayed a lot, when he wanted to.

Q. Who was the little girl?

page 53 } A. My daughter.

Q. Your daughter?

A. Yes.

Q. She is a pretty good sized girl, isn't she?

A. Well, she is not so large.

Q. How old is she?

A. She is thirteen years old, but she is awful small.

Q. Thirteen years old?

A. Yes.

Q. What is her name?

A. Shirley Anne.

Vesta Holdway.

Q. How old was the little boy?

A. Two and a half years old.

Q. Two and a half?

A. Yes.

Q. This is a pretty good step that comes off of the bus, isn't it, bigger than an ordinary step?

A. Well, it is just a little step.

Q. It is about twelve, fourteen inches?

A. It might be. I don't know.

Q. It is such a big step that a little boy two and a half years old would have a hard time making it unless somebody was holding his hand?

A. Well, he made it by himself. He got down
page 54 } by himself.

Q. Didn't Shirley hold his hand?

A. No, sir.

Q. What?

A. No, sir.

Q. You weren't paying that much attention to him?

A. The kid was standing in front of me and Shirley Ann done got off just as quick as the bus stopped, she went on.

Q. When you came to the place where you wanted to get off, you gave the signal to stop?

A. One of the men did. I didn't.

Q. And then you and the two children got off?

A. The little girl and he got off ahead of me.

Q. You got out of your seat?

A. Yes.

Q. The girl went in front and the little boy next and you next?

A. Yes, I was next to the kid. He was standing with me.

Q. The two children went off the bus?

A. No, the one child did. The little girl did.

Q. They didn't stop to talk to anybody?

A. The little girl didn't.

page 55 } Q. The boy didn't either?

A. The little boy was standing there when I turned around. That is the last I remember seeing him.

Q. He stood with you?

A. Yes.

Q. Didn't get off with the child?

A. Me?

Q. Didn't you get clear out to the door before you stopped to ask about the schedule?

Worley Stidham.

A. Yes, I could have been on the second step. I don't remember.

Q. That child was already gone?

A. He left—he must have went down when I turned to talk. He was standing there when I turned around to talk to the man.

Q. You went toward the back of the bus?

A. I got off, that is the last I remember. I don't know which way I went.

Q. Do you remember you were over across the road on the other side of the bus at the time you saw the child under the bus?

A. I didn't see it under the bus at all. I never did see it.

Q. You didn't see it?

page 56 } A. No indeed.

Q. How did you happen to scream?

A. It screamed and I knew the bus ran over it.

Q. It screamed from under the bus?

A. I don't know where it was at.

Q. You screamed too?

A. Yes, sir.

Q. At that time you were across the road on the other side from the bus?

A. No, sir, I was standing there where you go off the bus.

Q. Standing where you go off the bus?

A. Somewhere about the bus, when I come to myself.

Q. You don't know where you were, do you, Vesta?

A. I know where I was when the kid hollered, but I don't know afterwards where I was at. I sure don't.

Mr. Greear: I believe that's all.

Mr. Shannon: That's all.

(Witness excused.)

WORLEY STIDHAM

the next witness, called by and on behalf of the Plaintiff, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Shannon:

page 57 } Q. Worley, I believe you are the father of Thomas Stidham?

A. Yes, sir.

Worley Stidham.

Q. I believe Lonnie Stidham, the child who was killed by the Tri-State bus, was your grandchild?

A. Yes, sir.

Q. Were you on this bus at the time of the accident?

A. Yes, sir.

Q. Where were you going Mr. Stidham?

A. I started over to Keokee to work.

Q. You work on the night shift, I believe?

A. No, sir, I was helping with some mining timbers over there.

Q. Was it evening or morning when it happened?

A. Morning.

Q. Now when you got up—Vesta Holdway, I believe was also on the bus with the child?

A. Yes, sir.

Q. Where was the child sitting on the bus, do you know?

A. It was sitting back about a seat or maybe two on the left.

Q. Who was the child sitting with?

A. He was sitting with Vesta, I believe.

page 58 } Q. Now do you know who signaled the driver?
You don't know who signaled the driver to stop, do you?

A. No, sir, I don't.

Q. Go ahead and tell the Jury there just what happened immediately before the accident and look at the Jury and talk to them.

A. Well, the bus stopped. The little girl on the bus, she got off and the kid got off behind the little girl, and Vesta she turned and asked the bus driver how long he would be gone, when he would be coming back. He told her he would be gone about 30 minutes. Then she asked him what time he would be back on the next run. She couldn't catch him on that run she said and he told her a time and she got off.

Q. You say I believe the 13 year old, twelve or thirteen year old girl got off first?

A. She was a girl. I don't know her age.

Q. Did she run after she got off?

A. Well, I couldn't say. I didn't see her.

Q. How far was the little boy behind Vesta, I mean in front of Vesta?

A. Well, the little boy got off while Vesta was asking that bus driver that question.

Q. Just before that?

Worley Stidham.

A. He was in front of Vesta.
 page 59 } Q. Where was the other girl, she done got off?

A. The other girl done got off.

Q. I believe Vesta stopped in the doorway and asked these questions?

A. Yes, sir.

Q. Now how long after Vesta got off the bus was it until the bus started?

A. Just as quick as she stepped off the bus it started.

Q. Then what happened, if anything?

A. After the bus started I heard Vesta holler "they killed the kid": I got up myself, went looking under the bus for the kid.

Q. How far did the bus pull before you heard anyone holler?

A. I couldn't say positive. I would say it went somewhere from five to ten feet.

Q. Where was the—

A. That is my opinion about it.

Q. Where was the child?

A. The child was behind the front wheel.

Q. What front wheel?

A. Right front wheel.

Q. The right front wheel?

page 60 } A. Yes, sir.

Q. Had the child gotten off on the right side?

A. Yes, sir.

Q. Then what did you do? Go ahead and tell what happened.

A. I went ahead, picked the child up, brought it out. When I got out with the child, the child's father—I had it down in the road on my hands, I took it back with me.

Q. Was the child dead then?

A. Yes, sir, it was dead. I had them call the doctor from Kcooke down there.

Q. At that time where was the girl, the thirteen, eight or nine year old girl?

A. I couldn't say where she was, because when I come off the bus, I was looking for the kid. I never paid any attention to where anyone was.

Q. You say the bus started immediately after Vesta Hold-way stepped her foot to the ground?

A. Yes, sir.

Q. Was the door open or shut when the bus pulled out?

A. Open.

Worley Stidham.

Q. Did you see the driver give any signal of his intention to start?

A. No, sir.

page 61 } Mr. Shannon: Your witness, Mr. Greear.

CROSS EXAMINATION.

By Mr. Greear:

Q. Mr. Stidham, do you drive a car?

A. No, sir.

Q. You don't drive?

A. No, sir.

Q. You have ridden in cars a good deal?

A. Yes, sir.

Q. What kind signal do you give to start? Did you ever see a signal for starting?

A. Well, I wouldn't know myself. I don't drive. I don't operate one.

Q. You never saw one either, did you? Now, Mr. Stidham, at the time that the bus stopped, it was signaled to stop, wasn't it?

A. I suppose it was.

Q. Somebody pulled the cord and he stopped over near the right side of the road, didn't he?

A. Yes, sir.

Q. I believe the road was dry there?

A. Yes, sir.

Q. And the shoulder was smooth, you could walk on it all right?

page 62 } A. Yes.

Q. And at the place where he opened the door and they got out, they could get out on the shoulder of the road?

A. Yes, sir.

Q. Now at the time that the bus stopped, Vesta Holdway and the little girl Shirley Holdway and this child all got up together and just walked down the aisle to the door?

A. Yes, sir.

Q. Which seat were you sitting in?

A. On the seat behind the driver, the seat longways like that (indicating).

Q. You were on the first seat behind the driver?

A. The first seat behind the driver.

Worley Stidham.

Q. You were sitting longways with your back then to the left side?

A. Yes, sir.

Q. And your face facing the door?

A. Yes, sir.

Q. You could watch them and watched them get out?

A. Yes, sir.

Q. And the little girl and the boy just went right on out, didn't they, they didn't stop?

A. Yes, sir.

Q. Isn't that right?

page 63 } A. That's right.

Q. And Mrs. Holdway started to get out and she stopped on the step and turned around to talk to the driver about the bus schedules?

A. That's right.

Q. After she had finished her conversation why she got out?

A. Yes, sir.

Q. Now at the time that she stepped out, she didn't stop either, she just stepped out and started walking back toward the back of the bus?

A. I wouldn't say which way she started walking.

Q. She was not in front of the door, that's right, isn't it?

A. I was not paying that much particular attention. I didn't think about nothing about nothing happening.

Q. I mean she walked away from the door, you know that there was not anyone in front of the door?

A. Nobody that I seen.

Q. You were sitting looking right at it. Then the bus driver looked back to see if there was anything coming, didn't he?

A. I couldn't tell you about that.

Q. You didn't pay any attention to him?

page 64 } A. I was not paying that close attention. I never thought nothing was happening. I was just a passenger on the bus.

Q. He started the bus and he really just moved a very short distance?

A. I don't know how far he moved. He moved the bus up though.

Q. You don't know how far?

A. If you are not paying any particular attention to nothing like that, it would be hard to say how far a bus would move. I was only a passenger.

Worley Stidham.

Q. It didn't move but a very little bit, did it?

A. It didn't go so far.

Q. And then Vesta screamed, didn't she?

A. Yes, sir.

Q. When she screamed she was behind you, wasn't she?

A. I couldn't say. I don't know where she was. She done got off the bus.

Q. She was not near the door?

A. When she screamed, I come out the door.

Q. When you came out the door, she was not near the door?

A. I didn't see her.

Q. When she screamed you jumped off?

page 65 } A. That's right.

Q. You were just a few feet from it?

A. Yes, sir.

Q. You were the first one that got off?

A. Yes, sir.

Q. The bus driver stopped just as quick as she screamed?

A. Yes, sir.

Q. When you got off why the little child was laying right behind the front wheel?

A. That's right.

Q. And he was back under the bus completely, wasn't he?

A. Yes, sir.

Q. It was not inside of that front wheel?

A. The little child was laying—the bus had catched his head just like that, you see (indicating). The wheel had, just like that (indicating) and it was back part of his head was laying behind the wheel and his body was kind of turned out toward the road.

Q. But none of him extended out from under the bus, he was all under the bus?

A. Yes, I am pretty sure he was all under the bus.

Q. You didn't know he had gotten under there, did you?

A. No, sir.

page 66 } Q. You thought he had gone on with Shirley Ann, didn't you?

A. Well, the fact about it, I was not thinking about nothing happening, was not thinking nothing about it.

Q. When they got off together, you took it for granted he went on with the girl?

A. I was not thinking about it, you see.

Q. The baby stayed at Vesta's most of the time, didn't it?

A. Yes, sir.

Worley Stidham.

Q. And Shirley Ann played with him any they knew each other well?

A. Yes, sir.

Q. He had been there practically all his life, stayed at Vesta's more than he stayed home?

A. I suppose so. He stayed there a lot of the time.

Q. Shirley Ann was Vesta's daughter?

A. Yes, sir.

Q. Lived there with them?

A. Yes, sir.

Q. She lived in the same house with Vesta?

A. Yes, sir.

Q. And with the child?

A. Yes, sir.

page 67 } Q. Now when you jumped off the bus in the door, there was not anybody around the door at all, was there?

A. Not that I seen. I was just looking for the child. When she hollered the bus run over the kid, I come off the bus.

Q. The driver came off behind you?

A. I don't know who come off behind me. I was looking for the kid.

Q. He came off immediately?

A. When she hollered the bus run over the kid, I was looking for the kid.

Q. The bus driver did get off immediately?

A. Yes.

Q. You got the child out from under the bus and he got a seat out of the bus to put it on, didn't he?

A. Yes, sir.

Q. You all took it over across the road and put it on the seat?

A. Yes, sir, put it on the seat.

Mr. Greear: I believe that's all.

Mr. Shannon: Just one more question. Come up here a minute, Mr. Stidham.

RE-DIRECT EXAMINATION.

By Mr. Shannon:

page 68 } Q. Show the jury there where the child was. This, I believe is the front end of the bus. Show the Jury.

Thomas Stidham.

A. That was the right wheel?

Q. I think that is.

A. The child was—back of the head was laying just a little bit behind the bus wheel. Its body was laying turned out towards the side road, on the right side. In other words, out towards where I was reaching under the bus there to get it, you see.

Mr. Shannon: That's all.

Mr. Greear: Had the child been hit anywhere by the bus except just the back part of its head?

The Witness: Not to my knowings it didn't, not that I know of, just the back part of its head.

Mr. Greear: That's all.

Mr. Shannon: That's all.

(Witness excused.)

The Court: Gentlemen, you may take a ten minute recess.

(A short recess was had.)

The Court: You may proceed, gentlemen.

page 69 }

THOMAS STIDHAM

the next witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Shammon:

Q. I believe your name is Thomas C. Stidham?

A. That's right.

Q. You are the father of Lonnie Thomas Stidham?

A. That's right.

Q. How old was Lonnie Thomas Stidham?

A. He would have been three years old the 20th of December.

Q. Where do you live?

A. Exeter.

Q. Who did Tommy or Lonnie Stidham stay with a portion of the time?

A. Well, he stayed with his grandmother a portion of the time. She just let him have his way. Sometimes he would come down to the house stay maybe a day and night, then he

Thomas Stidham.

would go back to his grandmother's, stay two or three days.

Q. Was he a normal, healthy child?

A. As far as medical, there was not nothing wrong with him.

Q. Was he normal in everything?

page 70 } A. That's right, everything.

Q. At the time of this accident, where were you going?

A. I was going over to work for Ike Bled on timber work, me, my daddy and brother-in-law, started over there to work.

Q. I believe Vesta Holdway, the grandmother of the child, was going to the garden?

A. Yes, she was going to the garden, had the child with her.

Q. Tell the Jury what happened.

A. Well, the bus pulled up there and my brother-in-law pulled the cord and it stopped to let the girl and them get off. The little girl got off, run around the bus. Vesta—

Q. You said "little girl", who do you mean?

A. Vesta's little girl, thirteen years old, in school now. She run around the bus and the kid was right there with its grandmother, when she turned to talk with the driver. She turned talking and it must have got off. I did not see the kid get off, but it was bound to get off, walk around toward the front of the bus.

When Vesta stepped to the ground, the bus pulled out. By the time it pulled between five and ten feet, she screamed, the bus come to a sudden stop and we all jumped off and I seen the kid. That is the last of my remembrance,

page 71 } when I seen the kid was hurt, that bad, I just lost my head. That is about all I know about it.

Q. Do you have any more children?

A. Yes, I have one more.

Q. How old is it?

A. It will be two years old the 27th of this December.

Mr. Shannon: Your witness, Mr. Greear.

CROSS EXAMINATION.

By Mr. Greear:

Q. How old are you Mr. Stidham?

A. I am twenty-four years old, was this last past May.

Q. You had these two children?

A. That's right.

Thomas Stidham.

Q. One will be three in December and one two?

A. That's right, just a year and seven days difference.

Q. This little fellow stayed with his grandmother most of the time?

A. The biggest portion of the time, yes.

Q. He stayed with her at night and the night before, hadn't he?

A. Yes, he spent the night with her, going to the garden with her the next morning.

page 72 } Q. Shirley was her daughter?

A. That's right.

Q. And she lived there in the household too, didn't she?

A. Yes.

Q. She waited on this little boy, took care of him a lot of the time?

A. She played with him around the house, but when she was out, she didn't mess very much.

Q. She took care of him?

A. Played with him.

Q. Looked after him, he was a baby?

A. Yes, around the house.

Q. She would just as much out as any other place?

A. But her mother wouldn't allow her to take him out nowhere but except she was always with him.

Q. When they got up in the bus, after they gave the signal to stop the bus did stop, they all got up and walked out through the aisle?

A. Yes, walked down the aisle.

Q. They all walked down at the same time?

A. Yes, one behind the other.

Q. Shirley in front, then the little fellow next, and Vesta, the grandmother next?

page 73 } A. That's right.

Q. When they got to the door, why Shirley and the little boy went on off?

A. No, just Shirley went off and the little boy was standing there with its grandmother.

Q. The little boy was standing there with its grandmother?

A. Yes. When she turned to talk to the bus driver, he must have got off. I turned and talked to my daddy after the little girl got off.

Q. You really didn't pay any attention to the child?

A. No, because it was in its grandmother's care.

Q. You knew it had its grandmother and Shirley both there?

Thomas Stidham.

A. Shirley done run around the bus. I seen her running.

Q. You saw her run around the bus?

A. Yes. Then I turned to talk to my father.

Q. Didn't the little boy run after her?

A. No, sir.

Q. If he had, you couldn't have seen him?

A. The little boy was standing there when I turned around to talk to my father.

Q. He was short, you couldn't have seen him running?

A. But I seen him on the step of the bus.

page 74 } Q. Vesta stopped in the doorway?

A. Yes, she stopped right there.

Q. There was not room for both of them to stand in that doorway?

A. Yes, sir, there was room for both of them.

Q. What?

A. Yes, sir.

Q. Room for both of them?

A. Yes, sir.

Q. Was this—

A. He was just small.

Q. Was he standing on the same step?

A. She was standing with one foot on the step, one in the bus. The little boy just stopped.

Q. She was standing with one foot in the bus?

A. One in the bus, one in the step when she turned.

Q. She had one foot on the ground?

A. No, on the first step. There is a step where you hit the ground and one setting up on the bus kind of.

Q. Where was the boy?

A. He was standing at her foot the last time I seen him.

Q. Did she have hold of his hand?

page 75 } A. No, he was just standing there watching her.

Q. You turned and talked to your daddy?

A. That's right.

Q. The next you knew, Vesta was on the other side?

A. When she screamed she was on the side she got off.

Q. Wasn't she on the opposite side?

A. No, sir, she was not.

Q. Did you see her?

A. Because when she screamed, I wheeled around and saw her standing there.

Q. When your dad jumped off the bus?

A. She run, by the time he run off, she started running around the bus. She was not there when I got off.

Thomas Stidham.

Q. She started around running to go back to the side where the child was hit?

A. No, sir, she went in the opposite direction. She just took off in the opposite direction.

Q. In the opposite direction?

A. Around the opposite side of the bus.

Q. She was on the opposite side of the bus about the time you saw her?

A. She was on the right side.

Q. What?

A. She was standing by the side of the door
page 76 } when I saw her last. By the time I got off, she
done gone around the bus.

Q. When your daddy got off, there was not anybody there?

A. By the time he jumped off, maybe she run.

Q. He was the first one off?

A. He was the first one off.

Q. There was not a word said about that child by Vesta or anybody else there, was there?

A. No.

Q. Until she screamed?

A. That is the only thing I knowed about, when she screamed.

Q. And the bus had just barely moved, hadn't it?

A. It pulled from between anywhere in my estimation, I wouldn't say for the truth, between five, ten foot before it stopped.

Q. You all have talked this over several times?

A. No, sir, I have not talked it over with them.

Q. You have talked it over with Mr. Shannon several times?

A. Not particularly. He only got a statement from Vesta.

Q. What?

A. He only got a statement from Vesta.

page 77 } Q. He told her not to talk to anybody else?

A. He told me not to talk to anybody else and her either.

Q. He wouldn't let anybody talk to Vesta?

A. No.

Mr. Shannon: I object to that statement.

Mr. Greear: He says that's right.

The Court: Objection overruled.

Thomas Stidham.

Q. At that time you all wanted to make it that the bus moved as far as you could?

A. No, we never planned that the bus moved, we just estimated.

Q. You know that bus never moved anything like ten feet?

A. Between five and ten feet.

Q. A while ago you said five feet?

A. I said anywhere between five and ten.

Q. That is what every one of you have said?

A. I don't know, practically, they estimated it about that way, yes, sir.

Q. As a matter of fact, you were on the bus and you couldn't tell if it went?

A. You could tell it went some.

page 78 } Q. Did you get out and look back at the back to see the sign as to where it started?

A. I didn't look for any sign. It frightened me, I lost my head there.

Q. You don't know exactly how far it did move, do you?

A. I was just estimating.

Mr. Shannon: I object to that question.

The Court: I think it is argumentative.

The Witness: It was my estimation.

Mr. Shannon: It was merely his estimation.

Mr. Greear: We except.

Q. Now the child was laying immediately to the rear of the front wheel?

A. I told you how the child was laying. I never picked the child up.

Q. You didn't see it under the bus?

A. No, sir, my father is the one that got it.

Q. You didn't know it was under the bus?

A. Not until I got off there.

Q. You didn't look for it yourself?

A. I just heard the scream. My father got down, he picked it up by the time I got off.

Q. When Vesta got off, you didn't look?

A. I seen the child. When she screamed, I seen her.

Q. Before she screamed you did not see the child?

page 79 } A. No, sir, I was not looking for the child.

Q. You never looked for him?

A. No, sir.

Thomas Stidham.

Q. You were just sitting there talking?

A. That's right.

Q. You were paying no attention to it?

A. That's right.

Mr. Greear: I believe that's all.

Mr. Shannon: One more question. This Tri-State Bus Company is a common carrier, that is, it does carry passengers down there for anyone who wants to ride?

The Witness: Yes, sir.

Mr. Greear: There is no denial of that.

Mr. Shannon: I didn't know.

Mr. Greear: That is what we had the bus up there for.

Mr. Shannon: I didn't have it in evidence. I didn't know whether you would deny it.

It does haul anyone who wants to ride and pay the fare?

The Witness: Just anyone who wants to pay can ride it.

Mr. Shannon: You all paid your fare?

page 80 } The Witness: That's right, we all paid our fare.

Mr. Shannon: The little child probably didn't pay any fare, probably they didn't charge anything?

The Witness: No, they didn't charge anything for the child.

Mr. Shannon: That's all.

(Witness excused.)

Mr. Shannon: We close, your Honor.

The Court: Gentlemen of the jury, don't discuss this case with anyone, permit anyone to talk to you about it. Return to Court at one o'clock.

(Whereupon, a recess was taken until one o'clock, p. m.)

page 81 } AFTERNOON SESSION.

Court met pursuant to the recess.

Parties present same as before.

WHEREUPON, the Court and Counsel retired to Chambers, where the following proceedings were had, to-wit:

Mr. Greear: The defendant by counsel now moves the Court to strike the evidence of the plaintiff in this case upon the ground that no negligence has been proven in the actions of

the bus driver at the time of the accident, upon which a verdict against the defendant could be based or supported.

The evidence discloses a mere accident without anybody in particular being guilty of negligence and certainly shows no negligence on the part of the driver of the bus.

It is shown by the plaintiff's evidence he did everything that was supposed to be done. There was no duty upon him to get out and look under the bus or around it any more than he could see from his seat, because the child had gotten off accompanied by a girl 13 years old and the grandmother followed it, and no one had asked or made any suggestion that the child or the girl were in any place of danger.

The relationship of passenger and carrier was terminated when they left the bus unto the shoulder of the
page 82 } road, and there was no higher degree of care to be exercised on the part of the bus driver; and, therefore, there is nothing upon which a verdict against the defendant could be supported.

Mr. Shannon: Mr. Greear's statement that this infant had gotten off with a 13 year old girl certainly isn't in evidence. The evidence is that the child had gotten off right in front of its grandmother and that the bus had moved approximately five to ten feet, according to the physical facts. The child hadn't been in front of the bus and the driver owed a duty to keep a lookout for the child.

The relationship of passenger and carrier had not ceased by the mere fact of discharge. The child was of the age that it couldn't be guilty of contributory negligence and the bus driver knew that the child was there, because he just discharged him.

Mr. Greear: The evidence introduced by the plaintiff is contradictory with reference to the distance that the bus had traveled, but the best evidence which is introduced is shown by the name who made an investigation and the fellow who was driving the bus, that he had moved from 28 to 36 inches at the time of the accident and he further proved that the girl had been off the bus long enough that she had walked or traveled over 100 feet from the bus before the accident occurred.

The Court: I will overrule the motion.
page 83 } Mr. Greear: Exception.

WHEREUPON, Court and Counsel returned into Court, where the following proceedings were had, to-wit:

Thomas Stidham. Shirley Ann Holdway.

Mr. Shannon: I want to recall Mr. Stidham for one question.

THOMAS STIDHAM,
(Recalled) testified further as follows:

RE-DIRECT EXAMINATION.

By Mr. Shannon:

Q. Mr. Stidham, who had charge of the body, of the burial of your child?

A. Roy A. Green.

Q. How much was the funeral bill?

A. \$556.00.

Mr. Shannon: Do you want to ask him anything?

Mr. Greear: No.

(Witness excused.)

THEREUPON, the following evidence was introduced on behalf of the Defendant:

page 84 } SHIRLEY ANN HOLDWAY,
the first witness called by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Greear:

Q. Your name is Shirley Holdway?

A. Yes, sir.

Q. How old are you Shirley?

A. Fourteen.

Q. How old did you say you are?

A. Fourteen.

Q. What grade are you in in school?

A. Fifth.

Q. I believe you are the daughter of Vesta Holdway?

A. Yes, sir.

Q. Did you know Lonnie Stidham?

Shirley Ann Holdway.

A. Yes, sir.

Q. I believe you used to look after him, didn't you, there at your house?

A. Yes, sir.

Q. You were on the bus the time this accident happened?

A. Yes, sir.

Q. Where were you this morning?

page 85 } A. Where was I this morning?

Q. Yes.

A. I was at school.

Q. Who brought you up here?

A. Him (indicating).

Q. This man here (indicating)?

A. Yes, sir.

Q. Did they come to the school and get you?

A. Yes, sir.

Q. Just got here a while ago with you?

A. Yes, sir.

Q. Did your mother tell you to go on to school this morning?

A. Yes, sir.

Q. Were you and your mother and Lonnie together that day?

A. Yes, sir.

Q. Where were you and your mother and Lonnie going that day?

A. Over to Keokee.

Q. Over to Keokee?

A. Yes, sir.

Q. What were you going up there for?

page 86 } A. Going to get some cucumbers.

Q. Where were you going to get the cucumbers?

A. Over there at the garden.

Q. Where did you want to get off of the bus?

A. There at the depot.

Q. Is that the depot at Keokee?

A. Yes, sir.

Q. How far is your all's garden from the depot?

A. Right up on the hill.

Q. Right up on the hill from the depot?

A. Yes, sir.

Q. When you get off of the bus there on the main road, how do you go to get to the garden?

Shirley Ann Holdway.

A. Go across the road and up that dirt road.

Q. Follow that dirt road?

A. Yes.

Q. Is there a bridge on that dirt road?

A. Yes, sir.

Q. Do you go across that bridge?

A. Yes, sir.

Q. Had Lonnie been up there to the garden before that with you all?

A. Yes, sir.

Q. Now when you got off the bus, which one of page 87 } you got off first?

A. I did.

Q. Which one got off second?

A. I don't know. I reckon Lonnie did.

Q. Lonnie did?

A. Yes, sir.

Q. When you got off Shirley, which way did you go?

A. I went around across the road.

Q. Which way did you go around?

A. Back.

Q. Around back behind the bus?

A. Yes, sir.

Q. And across the road?

A. Yes, sir.

Q. Is that going over towards the depot, in that direction?

A. Yes, sir.

Q. Did your mother come on around?

A. She just stepped off the bus when the bus pulled out.

Q. Did she come around?

A. Yes, sir.

Q. Did she ask you where Lonnie was?

A. No, sir.

page 88 } Q. What? When did they tell you not to say that Shirley?

A. They didn't tell me.

Mr. Shannon: I object.

Mr. Greear: That is so, it was right in front of him and her. I asked her right in there and she told us 15 minutes ago and then he took her outside.

Mr. Shannon: I object to that remark.

Mr. Greear: It is a fact.

Mr. Shannon: It isn't a fact.

Shirley Ann Holdway.

Mr. Greear: I know it is.

Mr. Shannon: She didn't make such a statement as that in there, not in front of me.

The Court: You can go ahead and ask the questions and then if you want to, put on other evidence that she made other statements. You can do that, but you can't cross examine your own witness.

Mr. Greear: I was taken by surprise. I will ask to be allowed to cross examine her.

Mr. Shannon: So am I.

The Court: You can go ahead, if you want to say you are taken by surprise, say so and you can go ahead with your examination in impeachment.

Q. Did you talk to me a whole ago in here and page 89 } to Mr. Shannon?

A. Yes, sir.

Q. Did you tell us in there that your mother came around and asked you, "Where is Lonnie?"?

A. No, sir.

Q. You didn't say that in there?

A. No, sir.

Q. And then Mr. Shannon and your mother took you outside and talked to you?

A. No, sir, they did not talk to me.

Q. What did they take you out there for?

Mr. Shannon: I object, your Honor.

Q. Didn't they take you out that door?

A. Yes, sir.

The Court: Mr. Greear, if you just want to show you were surprised on one question, go ahead and finish with the examination of it. Then if you are taken by surprise, of course, you can cross examine and lay your foundation, but I think you should finish with her examination first and then lay your foundation.

Mr. Greear: All right.

Q. Did your mother ask you where Lonnie was?

A. No, sir.

Q. Did anybody ask you?

Shirley Ann Holdway.

page 90 } A. No, sir.
Q. Did you see him?

A. No, sir.

Q. He was not in front of the bus, was he?

A. I don't know.

Q. You didn't see him there, did you? You didn't see him there, did you?

A. No, sir.

Q. You had already crossed the road where you could see the front of the bus?

A. I was done gone across that bridge.

Q. You could see in front of the bus from where you were, isn't that right?

A. I never looked in front of it.

Q. You never looked in front of it. Will you give me a minute, sir? I want to see another witness with reference to this witness before I complete my examination.

The Court: All right.

Mr. Shannon: Your Honor, I object to holding the witness on the stand while he talks to other witnesses.

The Court: Just a minute, he is making an objection here.

Mr. Greear: What is your objection?

Mr. Shannon: I object to your putting a witness
page 91 } on the stand while you talk to other witnesses, and
ask her more questions when you come back. I don't
think that's right.

Mr. Greear: I don't see why.

The Court: Let me see counsel in chambers.

Whereupon, the Court and counsel retired to chambers, where the following proceedings were had, to-wit:

The Court: This little girl is here. If she makes statements which you say are contrary to other statements, you can ask her about it, but I don't think it would be proper for you to stop the examination of this girl and go out and talk to somebody else and then come back and ask her again.

I think if you were in there and you know what statements she made, ask her if she made those statements, and if she denies it, you can bring your witnesses in to show that she did make them.

Of course, I don't know what inference you can draw, but I don't think it is proper just to blaze away before the Jury there and make these statements, unless you gentlemen are

Shirley Ann Holdway.

going to take the witness stand, under oath, because it will have some effect on the Jury or may have, and it is not proper for counsel. I am not criticizing either one of you in particular, but I am criticizing you both. An argument
page 92 } between counsel that way is not proper. I think you ought to finish with your examination of this child, but then if afterwards you find out you failed to ask her a question, you can have the witness step aside and bring her back and ask the question.

Mr. Greear: I want to speak to the Sheriff who brought her up here and see if she made any statement to him and what statement she made, then I would know what to ask her.

The Court: I don't think you ought to keep this girl in here.

Mr. Greear: I think I certainly should keep her in here, in view of the circumstances.

The Court: Let her go in this room, but you ought to finish with her. Then if you want time to check up or anything else, you can do it, but I don't think to put a witness on the stand and then to make the statement you did make before the Jury, where you have to go out and verify it, is proper. Either one of you can go on the stand if you want to. I know how counsel feel about going on the witness stand. If there is a difference between you, you can both be sworn and tell it and let the Jury pass on it.

It is all right if she did make the statement, prove it, and that will go to impeachment, but you have to be
page 93 } taken by surprise, which you said you are, but I don't think you can do this piecemeal. You can go on and finish your examination of it, then if you want to have her brought back on the stand, you can do it, to ask a question later on, but I don't see any use in putting a witness on, you say you think you know what she was going to state. If she does not answer the way you thought she would, you can ask her if she didn't make those statements, if she says she didn't you can bring witnesses on to prove she did.

If you happen to get another witness she has made statements to at another time, you can bring her back and ask her those things.

Mr. Greear: All right.

Whereupon, the Court and Counsel returned into Court, where the following proceedings were had, to-wit:

Shirley Ann Holdway.

By Mr. Greear:

Q. Did you and your mother go back around to where the bus hit Lonnie?

A. I don't understand.

Q. I say did you and your mother go back to where the bus had run over Lonnie?

A. No, sir.

Q. What did you do? Did you go on to the garden?

A. No, sir.

Q. Where did you go?

page 94 } A. We was right there where it hit him.

Q. Came back where it hit him. Your mother came back with you?

A. Yes, sir, she was right there on this side of the road.

Q. You were over there, you and your mother were on the other side of the road?

A. Yes, sir.

Q. Then you all came back around to where it hit him?

A. No, sir.

Q. Did you see your grandfather get him out from under the bus?

A. No, sir.

Q. Where was he when you first saw him?

A. They had him laying on the seat on the side of the road.

Q. Before you saw him?

A. Yes, sir.

Q. You never did see him under the bus?

A. No, sir.

Mr. Greear: I believe that's all at this time.

CROSS EXAMINATION.

By Mr. Shannon:

Q. I believe you are Vesta Holdway's daughter?

page 95 } A. Yes, sir.

Q. Did I ever talk to you about this case in any way?

A. No, sir.

Q. Did you ever see me before today? I believe you saw me once, didn't you?

A. Yes, sir.

Q. Did I talk to you at that time?

A. No, sir.

Shirley Ann Holdway.

Q. Who came after you and got you at the schoolhouse?

A. That man right there (indicating).

Q. That man right there (indicating)?

A. Yes, sir.

Q. What did he tell you when he came after you?

A. He just told me they wanted me up here.

Q. Now when you got off the bus, did you have hold of the little boy's hand?

A. No, sir.

Q. Did you see the little boy any more after you got off of the bus until the little boy was lying in the seat there?

A. No, sir.

Mr. Shannon: That's all.

Mr. Greear: Just a minute.

page 96 } RE-DIRECT EXAMINATION.

By Mr. Greear:

Q. Did your mother tell you there that she had hold of Lonnie's hand and he jerked loose?

A. No, sir.

Q. You never heard that?

A. He jerked loose of her hand, got off the bus.

Q. He did jerk loose of her hand and got off the bus?

A. Yes, sir.

Q. You knew about that?

A. Yes, sir.

Q. That is when she stopped and talked to the bus driver and you had already gotten off?

A. Yes, sir.

Q. Did he get down off the step by himself or did you help him down?

A. He got off by himself.

Q. I believe you were up there at your home when Mr. Shannon came there and you heard him talk to your mother and the other members of your family about the accident? This man here (indicating), you were there and heard him talk to your mother about it?

A. No, sir.

Q. What?

page 97 } A. No, sir.

Q. Did you ever see him up at your home?

A. No, sir.

D. A. Pierce.

Q. Where did you hear him talk to them about it?

A. At the store.

Q. You met him at the store and talked to him about it, you were with him, and then did you go out with your mother after we were in this room, go out that door over there a while ago?

A. Yes, sir.

Q. Mr. Shannon went with you?

A. Yes, sir.

Mr. Greear: That's all.

Mr. Shannon: Did I talk to you after you went out?

The Witness: No, sir.

Mr. Shannon: Did Mr. Mullins talk to you and ask you what you would testify, coming up here?

The Witness: Yes, sir, he asked me questions.

Mr. Shannon: Did you tell him what you have told here?

The Witness: Yes, sir.

Mr. Shannon: That's all.

(Witness excused.)

Mr. Greear: May I have a minute or two please, sir, to confer with a witness?

page 98 } The Court: How much time do you want?

Mr. Greear: I would say about five minutes.

The Court: All right. Gentlemen of the Jury, you can take a five minute recess.

(A short recess was had.)

The Court: You may proceed.

D. A. PIERCE,

the next witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Greear:

Q. Your name is Dewitt Pierce?

A. Yes, sir.

Q. Were you sworn this morning, Mr. Pierce?

A. Yes, sir.

D. A. Pierce.

Q. Where are you located now, Mr. Pierce?

A. Pennington Gap.

Q. How long have you been a member of the State Police Force?

A. About three and a half years.

Q. Were you formerly located in this county?

A. Yes, sir, at Big Stone.

Q. Were you called with reference to the accident
page 99 } that occurred when the bus of the Tri-State Coach
Corporation killed an infant child near Keokee?

A. Yes, sir.

Q. Did you go there?

A. Yes, sir.

Q. What time did you receive the call?

A. Oh, it was around eight-thirty, I guess, something like that, somewhere along there.

Q. What time was it when you arrived?

A. About quarter after nine, between nine and nine-thirty. I don't know exactly.

Q. Was the bus still there?

A. Yes, sir.

Q. Where was the bus located?

A. Sitting on the right-hand side of the road, 606, headed into Keokee.

Q. Had it been moved from the scene of the accident when you got there?

A. According to the driver, it hadn't.

Mr. Shannon: I object, unless he knows.

Q. I will ask you another question. Did you find any signs there of the accident?

A. Yes, sir, you could see where the child's head had been mashed down against the road.

Q. What sign was on the road there?
page 100 }

A. Blood and hair.
Q. Where was that spot of blood and hair that you found on the road there?

A. Well, it was approximately eight or ten inches behind the right front wheel on the hard surface part of the road.

Q. Was there any similar sign on the tire just above it?

A. Yes, sir, there was hair also on the tire, but I don't remember whether it was the middle or just where it was at, but there was hair on the tire.

Q. Were any of the other folks there at the time?

French Kilbourne.

A. No, sir, I didn't talk to any. The only one that I talked to was the driver.

Mr. Greear: I believe you may ask him.

CROSS EXAMINATION.

By Mr. Shannon:

Q. Mr. Pierce, did you examine the bus, I mean the front tire? You did, didn't you?

A. Yes, sir.

Q. Did you examine the rear tire?

A. No, sir, I didn't pay any attention.

Q. Did you talk to the driver?

page 101 } A. Yes, sir.

Q. Did he point out to you where he had stopped and how far he had pulled out?

A. No, he just said the bus was sitting where he stopped.

Q. At that time did he point out to you some black marks down there?

A. No.

Q. You don't know how far the bus had run after it stopped to let the passengers off, do you?

A. No, sir.

Q. There was no way for you to tell. You don't know how far, if any, this bus pushed this child before it mashed its head, do you?

A. No, sir.

Mr. Shannon: That's all.

Mr. Greear: Do you know whether it pushed it at all?

The Witness: I don't know.

Mr. Greear: That's all.

(Witness excused.)

page 102 } FRENCH KILBOURNE

the next witness, having been first duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Greear:

Q. Your name is French Kilbourne?

A. Yes, sir.

French Kilbourne.

Q. Where do you live?

A. Appalachia.

Q. What is your occupation?

A. Mechanic.

Q. By whom are you employed?

A. Tri-State Coach Corporation.

Q. What is your position with that company?

A. Shop foreman.

Q. Where do you work?

A. Work in Big Stone Gap.

Q. How long have you been an automobile mechanic, Mr. Kilbourne?

A. I started in '27, 1927.

Q. Were you familiar with Bus No. 112, I believe, of the Tri-State Coach Corporation, the one that Mr. Clark was using the day of this accident?

A. Yes, sir.

page 103 } Mr. Shannon: I object. There is no evidence he was driving No. 112. Mr. Clark said he didn't know.

Mr. Greear: Mr. Clark said it was 112. He said he couldn't see the number on this, but that was the number.

Mr. Shannon: That's right.

Q. Is that a picture of the front of that bus No. 112?

A. Well, that looks like the front of it. I don't see the number, but still and all, it is the identical same bus.

Q. That is the identical same bus?

A. Yes, sir.

Q. With reference to the front of that bus, how it is made, with reference to giving the driver a view in front of it, whether or not the front end slopes in this way or slopes back this way or straight up and down, how is that?

A. It has a gradual little slope in this direction so the driver can see everything.

Q. It has a gradual slope back?

A. Back towards the driver, very small slope.

Q. Have you made a diagram showing the dimensions of that bus, Mr. Kilbourne?

A. I tried to make one, yes, sir.

Q. Come up here to the Jury now. Is this the diagram which you made?

page 104 } A. Yes, sir.

French Kilbourne.

Mr. Greear: Mark that Exhibit No. 4 please. We desire to file it.

(The diagram was marked and filed Exhibit No. 4, Witness French Kilbourne.)

Q. What do these marks indicate at the end and towards the middle?

A. This is the rear door and this is the front.

Q. The front door?

A. Yes, sir.

Q. What do these squares along the top represent?

A. That is the windows.

Q. What are the dimensions of those windows?

A. Well, I have them right on there. You can't hardly see from here.

Q. Read them off to the Jury.

A. Twenty-two inches high and 32½ inches wide.

Q. What is the width of the door opening?

A. That is around 25, 26 inches.

Q. What is the distance from the front bumper back to the front of the front wheel?

A. Well, around 55 inches.

Q. And what is the diameter of the wheel and the tire?

A. Well, the best I can measure was 38 inches.

page 105 } Q. What is the entire length of the bus from bumper to bumper?

A. The entire length, 29 feet from bumper to bumper.

Q. How wide is it?

A. Eight feet from the end of the bumper around.

Q. How far is it from the ground up to the windshield?

A. Ground up to the windshield is about five foot four inches, something like that.

Q. What size are the windshields that are in the bus?

A. Well, there is two in there side by side, twenty-two inches height and 40 inches long.

Q. Two windshields side by side?

A. Yes, sir.

Q. Each one that same size, twenty-two by forty inches?

A. Yes, sir, the same thing.

Q. What is the distance from the ground up to the windows along the side?

A. This one is about 65 and a half, 66 inches.

Q. In other words, the windshields come down lower, a little lower?

French Kilbourne.

A. Yes, sir, they come down a little bit lower.

Q. Is this the way you have this drawn shown page 106 } sloping back, is that the way the bus is made?

A. Yes, sir.

Q. When the driver is in his seat, what vision does he have to the front of the bus?

A. Well, he has a clear vision all except about 3 foot right here in front.

Q. About the same as driving would be?

A. He has more vision than driving an automobile because you have the hood out there in front.

Q. How far does he sit from his windshield?

A. Well, the seat is about three feet from the front of the windshield.

Q. Is there any hood in front of the windshield or anything in front of the windshield?

A. No, sir, there is a little rub rail, just about that wide, right around the edge of the windshield.

Q. Is that this railing shown in this picture?

A. Here it is up here (indicating).

Q. What is this (indicating)?

A. Here is the rail, same as this rail, they are all the same.

Q. This little rail shown in the picture, that is what it is you call the rub rail?

A. Rub rail they call it. It goes all the way page 107 } around the side of the bus.

Q. Did you measure the distance from that door, the step there to the ground?

A. Yes, sir.

Q. How high is it?

A. It is about 18 inches, 16, something like that, 16 inches, I believe it is.

Q. Sixteen inches?

A. Yes, sir.

Mr. Greear: I believe that's all. You may cross-examine, Mr. Shannon.

CROSS EXAMINATION.

By Mr. Shannon:

Q. You made those measurements for the Tri-State Coach Corporation?

A. I made them, yes, sir. I made the measurements here for them.

French Kilbourne.

Q. They asked you to make them?

A. Yes, sir.

Q. You do have a better vision in front and near your front wheels in the bus than you would in an automobile, don't you?

A. Yes, sir, you would have a better vision.

Q. You say you are shop foreman?

page 108 } A. Yes, sir.

Q. What kind of brakes does that bus have, hydraulic?

A. No, sir, Bendix-Westinghouse air brakes.

Q. They work by the same principle as hydraulic only by air?

A. No, they are more severe than hydraulic.

Q. The pressure is equalized on each wheel?

A. Yes, sir.

Q. Same as hydraulic brakes, isn't it?

A. Yes, sir.

Q. Brakes like that, one of the advantages of them, I believe, is you don't have more pressure on one wheel than the other, do you?

A. On air brakes you mean?

Q. That's right.

A. Yes, you have more pressure on the rear wheels than you would have on the front.

Q. You don't have more pressure, it is not as apt to have more pressure on one rear wheel on one side than it is the other, as mechanical brakes?

A. No, sir, it is equalized, two wheels equalized together.

Q. The two wheels are equalized. Those buses give a lot of trouble by the wheels getting unequalized?

page 109 } A. No, sir, hasn't caused this any trouble.

Q. Never had any trouble like that?

A. No, sir.

Q. In other words, it has been your experience as a mechanic, when you apply the brakes on a bus like that, that both the rear wheels had equal pressure?

A. Yes, sir.

Q. Do you keep those buses in good shape, examine them for that?

A. Yes, sir.

Q. Was it your duty to examine this particular bus?

A. Well, it would have been my duty if there was anything wrong with it.

Q. Was there anything wrong with it?

French Kilbourne.

A. No, sir.

Q. The brakes all equalized and were good?

A. Yes, sir.

Mr. Shannon: That is all.

RE-DIRECT EXAMINATION.

By Mr. Greear:

Q. Mr. Kilbourne, anything unusual for one wheel to catch a little bit in front of the other, slow down one wheel quicker than the other one?

A. No, sir, I don't think so. The air is equal page 110 } to each wheel to some amount.

Q. Same way with an automobile with hydraulic brakes, the pressure is the same in each wheel, but one sometimes—

Mr. Shannon: I object to him arguing with the witness.

The Court: Sustained.

Mr. Shannon: He put him on there.

Mr. Greear: Yes, sir, he is my witness. I will vouch for him.

The Court: You can't lead him and suggest to him. That is what I sustained the objection to.

Q. Mr. Kilbourne, is there such a thing as a brake on an automobile, a hydraulic brakes, one wheel catching a little in front of the other?

A. Yes, sir, there is several things causes that.

Q. What is that?

A. Several things can cause that on an automobile with hydraulic brakes.

Q. Is there a brake lining on both bus wheels and automobile wheels?

A. Yes, sir, there is a brake lining on both.

Q. Does the condition of that lining have anything to do with the catching quickly or not?

A. Yes, sir, sometimes they got grease on them, page 111 } they won't catch; sometimes they catch quicker with grease.

Q. They will do that even though there is equal pressure?

A. Yes, sir.

French Kilbourne.

Mr. Shannon: There is no evidence that that was the condition of those brakes.

The Court: Let him answer. It is leading though. This is a mechanic. He is the man who is supposed to know about automobiles better than anybody else. Let him tell.

Mr. Greear: Go ahead and explain to us, Mr. Kilbourne, how one brake can catch quicker than another, even though the pressure is applied, either from air or from the hydraulic system, though it is applied the same, what would cause it?

A. Well, sometimes the brakes is out of adjustment. Then other times there is grease on it and on the hydraulic, maybe the brake cylinder is leaking fluid there.

Q. As to whether or not it is dry or wet, would that have anything to do with it?

A. If a brake lining is wet, it won't hardly hold at all.

Mr. Greear: I believe that's all.

page 112 } RE-CROSS EXAMINATION.

By Mr. Shannon:

Q. It is your duty to keep the buses up?

A. Yes, sir.

Q. The driver reports any mechanical defects to you?

A. Yes, sir.

Q. Did you have any report on this bus shortly after that by Clark or anyone else that either of the wheels were grabbing?

A. No, sir.

Q. Is it customary for a driver, if he does have unequal brake pressure, to report it to you and you fix it?

A. Yes, sir.

Q. Did Mr. Clark drive the bus sometime after this?

A. I think he was off a couple days after this. I think so.

Q. From the time the accident happened up until the present day, do you recall having had to adjust the brakes on that particular bus?

A. From then until now?

Q. Yes.

A. Oh yes, we adjust the brakes on them, we service them once a week.

Q. Do you examine the brakes every week to see whether they are catching equally and all that?

A. Yes, sir.

page 113 }

Vesta Holdway.

Q. Have you ever had any particular objections on this particular bus that week?

A. No, sir.

Q. Before or after the accident that week?

A. No, sir.

Q. Are the drivers all instructed by you as shop foreman to report any unusual behavior of the brakes when they are applied?

A. They got instructions to report anything that is wrong with the bus.

Q. That is one of the things?

A. Yes, sir, anything at all, brakes or anything

Mr. Shannon: That's all.

Mr. Greear: I believe that's all, Mr. Kilbourne.

(Witness excused.)

Mr. Greear: I want to recall Mrs. Holdway.

VESTA HOLDWAY (Recalled)
testified further as follows:

CROSS EXAMINATION (Cont'd).

By Mr. Greear:

Q. Mrs Holdway, how old are you?

A. Forty-one years old.

page 114 } Q. Forty-one?

A. Yes.

Q. You are in normal good health, aren't you?

A. I reckon so, so far as I know.

Q. Had you tended to your garden mostly yourself this past summer?

A. Me and my husband together.

Q. But you and your children, your child and grandchild had been up there a good many times?

A. Yes, sir.

Mr. Greear: That's all.

Mr. Shannon: I want to recall Clark for one question.

The Court: All right.

(Witness excused.)

Walter C. Clark.

The Court: Are you through?

Mr. Greear: No, sir.

Mr. Shannon: He can go ahead and finish. I just want to ask one question on cross examination. Cancel that. Go ahead.

The Court: Go ahead.

WALTER C. CLARK (Recalled)
testified further as follows:

RE-DIRECT EXAMINATION.

page 115 } By Mr. Shannon:

Q. Mr. Clark, I believe as a bus driver, you had instructions to report any defect in the brakes, did you not?

A. Do how?

Q. As a bus driver, were you instructed by the shop foreman or any other person to report any defects in the brakes and such as that in the bus?

A. Well, that has always been a rule, any time there was anything wrong with the bus, the driver always reported it.

Q. Did you follow that rule usually?

A. Yes, sir.

Q. Well, after this wheel, you testified here to, on a dry surface you stopped and you could tell where you stopped, the skid marks, did you report that to the bus company?

A. No, sir.

Q. Why?

A. Well, there was not enough force there, enough shock there to make any difference that I could tell. The only difference you could tell was just on the surface of the road. You have seen some cars, a little grease gets on one wheel, you go to stop, it will lock that wheel right quick. That wheel will slide.

Q. You didn't feel the wheel lock this time?

page 116 } A. No, sir.

Q. You didn't feel anything unusual in the brakes, did you?

A. No, sir.

Mr. Shannon: That's all.

Mr. Greear: That's all.

(Witness excused.)

DR. WILLIAM J. McGEE

the next witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Greear:

Q. You are Dr. William McGee?

A. Yes, sir.

Q. Where are you located, Doctor?

A. Located at Keokee.

Q. What is your occupation?

A. Physician and surgeon.

Q. What medical school are you a graduate of?

A. St. Louis University.

Q. What year did you graduate?

A. 1933.

Q. How long have you been practicing your profession?

A. Well, slightly over 16 years, including the
page 117 } service in the army.

Q. How long were you in the Army?

A. Six years.

Q. How long have you been at Keokee?

A. Four months, soon be four months.

Q. Were you there on August 4?

A. Yes, sir.

Q. This year?

A. Yes, sir.

Q. Were you called that day with reference to an accident that occurred in which a small child had been killed by a bus?

A. Yes, sir.

Q. Did you go there soon after you were called?

A. Yes, sir.

Q. What did you find on your arrival, Doctor?

A. Well, I saw the bus parked on the highway, on the turn near the Keokee Depot and across the road from the bus on the gravel, off of the road, there was the body of the boy lying on a seat *cusion*, partly covered, the child apparently was dead on sight.

He had a bruise on the left side of the skull, bleeding from the bruise on the right side of the skull, and bleeding from the right ear and the head was turned to one
page 118 } side in a unnatural position, indicating that there was probably a broken neck. He did not have any other visible injuries.

Q. Did you act as coroner?

Vesta Holdway.

A. Yes, sir.

Q. In that case?

A. I did, but by so doing, I waited until the ambulance came and took the body away.

Q. Did you look over the child's body, Doctor?

A. Well, yes, sir.

Q. I will ask you if you found any other injuries or signs of abrasions or bruises of any kind on him except on his head and neck?

A. No, no bruises.

Q. Any break in the skin any place else?

A. No. If he had any, I didn't see them.

Mr. Greear: I believe you may ask him.

CROSS EXAMINATION.

By Mr. Shannon:

Q. Doctor, you would say that was the cause of his death?

A. Fractured skull and fractured cervical vertebra, broken neck.

Q. Did he seem to have been a normal child in page 119 } his lifetime?

A. Apparently so. I had never seen him before, but apparently he looked normal.

Q. Well built child?

A. Yes, sir.

Mr. Shannon: That's all.

(Witness excused.)

Mr. Greear: We rest.

Mr. Shannon: I would like to recall Mrs. Holdway for rebuttal.

The Court: All right.

VESTA HOLDWAY (Recalled)
testified further as follows:

RE-DIRECT EXAMINATION.

By Mr. Shannon:

Q. You are the same Vesta Holdway who testified a while ago?

Vesta Holdway.

A. Yes, sir.

Q. As you went down the bus door, did you have this little child by the arm?

A. No, sir.

Q. Did he jerk loose from you?

A. No.

Mr. Shannon: That's all.

page 120 } RE-CROSS EXAMINATION.

By Mr. Greear:

Q. Did you have him by the hand?

A. No, sir, I didn't have him at all.

Q. He didn't jerk loose from you at all?

A. No, sir.

Mr. Greear: That's all.

The Witness: If I had him by the hand, he couldn't have jerked loose, he would have held on, I would have held to him.

Mr. Shannon: We rest.

(Witness excused.)

The Court: Let me see counsel in chambers.

Whereupon, the Court and Counsel retired to chambers, where the following proceedings were had, to-wit:

Mr. Greear: Judge, Sheriff Fleming has been located and I want to put him on for a question, please, sir?

The Court: Well, I suppose since we haven't gotten any further along, you are entitled to put him on.

Whereupon, the Court and Counsel returned into Court, where the following proceedings were had, to-wit:

Shirley Holdway. Harold L. Fleming.

page 121 } SHIRLEY HOLDWAY,
(Recalled) testified further as follows:

RE-DIRECT EXAMINATION.

By Mr. Greear:

Q. Shirley, as you came up to the Court today, was Sheriff Fleming in the car or a man with a uniform on in the car with you?

A. Yes, sir.

Q. I will ask you if you told him on your way up that when you got off the bus, you came around behind it and that your mother got off and came on around and asked you where the child was?

A. No, sir.

Q. You didn't tell him that?

A. No, sir.

Q. Didn't you tell him that after she had come around and asked you where the child was, that the bus started to pull out and she screamed?

A. No.

Q. You didn't tell him that?

A. No, sir.

Q. Did you tell him any words like that?

A. No.

Mr. Greear: All right.

Mr. Shannon: Shirley, who asked you the ques-
page 122 } tions, Sheriff Fleming or the other fellow?

The Witness: The other one.

Mr. Shannon: Sheriff Fleming didn't ask you anything?

The Witness: It was that other man, not the sheriff.

Mr. Shannon: It was not the sheriff, all right.

(Witness excused.)

HAROLD L. FLEMING,
the next witness, having been first duly sworn, was examined
and testified as follows:

DIRECT EXAMINATION.

By Mr. Greear:

Q. You are Harold L. Fleming?

Harold L. Fleming.

A. Yes, sir.

Q. Are you the Sheriff of Wise County?

A. I am.

Q. Did you accompany Mr. Leslie Mullins, attorney, and go along to summons this little girl Shirley Holdway this morning?

A. I did.

Q. Whose car did you all go in?

A. Leslie Mullins's.

page 123 } Q. Was he driving?

A. Yes, sir.

Q. Did you summons the girl and bring her back with you in the car?

A. I did.

Q. On that trip as you came back, Mr. Fleming, I will ask you if that little girl made a statement that after she got off the bus, she came around towards the back of the bus and then her mother came around and asked her where the child was?

A. She did.

Q. And did she also say that after her mother asked her where the child was, that the bus started to pull out and her mother screamed?

A. Yes, sir.

Mr. Greear: That's all.

CROSS EXAMINATION.

By Mr. Shannon:

Q. Mr. Fleming, who was asking the questions, you or Mr. Mullins?

A. Mr. Mullins was. I didn't ask any questions at all.

Q. You just overheard that conversation?

A. I was in the car, yes, sir.

page 124 } Q. Just what was Mr. Mullins asking her? Did he suggest those answers to her?

A. No, he was just asking questions about the accident when that happened.

Q. What was it the little girl said?

A. Do what?

Q. What was it the little girl said, she got off and her mother came around?

A. She stated she got off the bus first. Then later her mother came around and asked her where the child was.

Harold L. Fleming.

Q. Did she say where she was when her mother asked her where the child was?

A. She got off the bus and started back to the back of it.

Q. Started back at the back?

A. Yes, sir.

Q. Did she say how far down toward the bus she was?

A. She said her mother got to one window from the door when she screamed.

Q. Her mother had just gotten off and started down there where she had gotten to one window?

A. Yes, sir.

Mr. Shannon: That's all.

Mr. Greear: That's all.

page 125 } (Witness excused.)

Mr. Greear: We close.

Mr. Shannon: That's all.

The Court: Let me see counsel in chambers.

WHEREUPON, the Court and Counsel retired to Chambers, where the following proceedings were had, to-wit:

Mr. Greear: The defendant, by counsel, now renews his motion to strike the evidence of the plaintiff in this case on the ground that no negligence has been shown upon which any verdict against this defendant could be supported.

The Court: I will overrule the motion.

Mr. Greear: Exception.

This was all the evidence introduced.

WHEREUPON, the instructions were then considered by the Court and Counsel, in Chambers, as follows:

INSTRUCTION NO. P-1 (Given).

The Court instructs the Jury that the Tri-State Coach Corporation is a common carrier and that it owes to its passengers the highest degree of care for their safety known to human prudence and that the said Tri-State Coach Corporation is liable for the slightest negligence which human care, skill and

foresight could have foreseen and guarded, and by reason of which the death of the infant might have been occasioned. page 126 }

Mr. Greear: The defendant, by counsel, object to the giving of Instruction P-1 first because it is not a proper statement of the law; and secondly, because it has no application to this case.

This is not a case of carrier and passenger, since the relationship of carrier and passenger had terminated prior to the accident. The plaintiff is not entitled to any instruction based upon the relationship of carrier and passenger in this case, and to give such an instruction would be prejudicial to the defendant.

The Court: I am going to give this instruction.

Mr. Greear: Exception.

INSTRUCTION NO. P-2 (Refused).

The Court instructs the Jury that the Tri-State Coach Corporation is a common carrier of passengers and that the law in tenderness to human life and limbs, holds common carriers liable to the slightest negligence, and compels them to repel by satisfactory proof every imputation of such negligence.

page 127 } The Court: I am going to refuse that instruction.

Mr. Shannon: Exception.

INSTRUCTION NO. P-3 (Given).

The Court instructs the Jury that the driver of an automobile or a bus is charged with knowledge of the fact that a child of tender years may be expected to act upon childish impulses and is bound to take that into consideration and exercise the vigilance and the caution which the circumstances demand.

Mr. Greear: The defendant, by counsel, objects to Instruction P-2 for the reason that that is not a proper statement of the law. There is no duty in the exercise of ordinary care to use vigilance and caution and to tell the Jury such would be prejudicial to the defendant. It was certainly not

to be expected in this case that the child who had gotten off the bus in company with an older girl, would crawl under the bus and that would not be a childish impulse, such as this instruction would be given in a case where a child would run across the road at a time when it was not safe to do so, or some such act of that kind.

page 128 } The Court: Objections overruled.
Mr. Greear: Exception.

INSTRUCTION NO. P-4 (Given).

The Court instructs the Jury that if they believe from the evidence that at the time the infant, Lonnie Thomas Stidham, was killed that the said Lonnie Thomas Stidham was under seven years of age, then the said Lonnie Thomas Stidham is presumed to have been incapable of contributory negligence.

(Instruction P-4 was given without objection.)

INSTRUCTION NO. P-5 (Given).

The Court instructs the Jury that the Tri-State Coach Corporation in this case is responsible for the acts of its driver.

Mr. Greear: The defendant, by counsel, objects to the giving of Instruction P-5 because there is no reason to give the instruction. There has been no denial of the agency in this case.

The Court: I am going to give Instruction P-5.

Mr. Greear: Exception.

page 129 } INSTRUCTION NO. P-6 (Given).

The Court instructs the Jury that if they find for the plaintiff, in ascertaining the damages that the plaintiff is entitled to recover, they shall find the same with reference:

First: To the pecuniary loss sustained by the father and the mother of the deceased, and the one brother, fixing such sum as would be equal to the probable earnings of the deceased child, taking into consideration his age, intelligence

and health during what would have been his lifetime, if he had not been *killed*.

Second: By adding thereto compensation for the loss of his care, attention and society to his father and mother and his brother.

Third: By adding such further sum as they may deem fair and just by way of solace and comfort to his father and mother and brother, for the sorrow, suffering and mental anguish occasioned to them by his death, not exceeding fifteen thousand dollars.

(Instruction P-6 was given without objection.)

Whereupon, the following instructions were tendered on behalf of the Defendant:

page 130 } INSTRUCTION NO. D-1 (Refused).

The Court instructs the Jury that the burden of proof in this case is on the plaintiff to prove the negligence which he alleges against the bus driver by a preponderance of the evidence, and if the Jury believes that the plaintiff has failed to thus prove his case, then they should find for the defendant.

The Court: I am going to refuse Instruction D-1.

Mr. Greear: Exception.

INSTRUCTION NO. D-1(a) (Given).

The Court instructs the Jury that in this case the burden of proof is upon the plaintiff to prove by a preponderance of the evidence that the driver of the bus was guilty of negligence and that this negligence was the proximate cause of the injuries which resulted in the death of said infant.

(Instruction No. D-1(a) was given without objection.)

INSTRUCTION NO. D-2 (Refused).

The Court instructs the Jury that in this case the deceased,
 page 131 } Lonnie Stidham, at the time of the accident, was
 not a passenger on the bus and the duty owed by
 the bus driver to the child was ordinary care.

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The Court: I am going to refuse Instruction No. D-2.

Mr. Greear: The defendant, by counsel, except to the Court's refusal to give Instruction No. D-2.

INSTRUCTION NO. D-2(a) (Given).

The Court instructs the Jury that the relationship of passenger and carrier existed while Lonnie Stidham, Vesta Holdway and Shirley Holdway were on the bus as passengers and until they alighted from the bus at a place reasonably safe for pedestrians to be. Should the Jury believe from the evidence in this case that these passengers had alighted from the bus at such a place, then the only duty owed as between the driver of the bus and these persons was that of ordinary care to look out for their safety.

(Instruction No. D-2(a) was given without objection.)

INSTRUCTION NO. D-3 (Given).

The Court instructs the Jury that ordinary care is such care as an ordinary prudent person would exercise under similar circumstances.

(Instruction No. D-3 was given without objection.)

INSTRUCTION D-4 (Refused) *without* *obj.*

The Court instructs the Jury that if they should believe from the evidence in this case that Lonnie Stidham was killed as a result of a mere accident, they must find for the defendant and this although they may believe that Lonnie Stidham and those accompanying him were also free from fault.

Mr. Shamon: I think that instruction is misleading for this reason; of course, there was an accident and an accident has a peculiar meaning in law.

The Court: I am going to refuse that instruction.

Mr. Greear: Exception.

INSTRUCTION NO. D-5 (Refused).

The Court instructs the Jury that this is a negligence action. *67A*

Without negligence, which was the proximate cause of the accident, there is no liability on the defendant bus company. ✓

The Court: I will refuse that instruction.
page 133 } Mr. Greear: Exception.

INSTRUCTION NO. D-6 (Given).

The Court instructs the Jury that it is their duty to try this case without being influenced by sympathy from the mere fact that Lonnie Stidham was injured and died, for the Jury as much as the Court are under the solemn obligation of an oath to decide according to the law and the facts. Without negligence on the part of the bus driver the defendant bus company cannot be held liable.

(Instruction No. D-6 was given without objection.)

INSTRUCTION NO. D-7 (Refused).

67 The Court instructs the Jury that the plaintiff cannot recover, if the Jury believe from the evidence that the injury was purely accidental.

The Court: I am going to refuse Instruction D-7.
Mr. Greear: Exception.

INSTRUCTION NO. D-8 (Refused).

The Court instructs the Jury that if they believe from the evidence that the parents of the intestate, Lonnie
page 134 } Stidham, were present at the time of the injury,
or that the person in place of a parent, and exercising the functions of a parent was present at the time of injury; that they failed to exercise ordinary care for the protection of the intestate and that said parents' negligence in this respect contributed to the injury of which Lonnie Stidham died, then there can be no recovery even though they believe the Tri-State Coach Corporation or its driver was also negligent, and they should find for the defendant.

The Court: I am going to refuse Instruction No. D-8.
Mr. Greear: Exception.

INSTRUCTION NO. D-9 (Given).

The Court instructs the Jury that they are the sole judges of the credibility of the witnesses and in determining the weight given to the evidence of any witness they may consider the appearance and demeanor of the witness on the stand; their manner of testifying; their apparent candor and fairness; their apparent intelligence or lack of intelligence; their interest in the result of the suit; their opportunity for knowing the truth, and all other surrounding circumstances appearing on the trial and from all these things
page 135 } they are to determine which witnesses are the
more worthy of credit, and to give credit accordingly.

(Instruction No. D-9 was given without objection.)

INSTRUCTION NO. D-10 (Refused).

The Court instructs the Jury that the parents of a child and other persons in charge of a child of tender years are charged with knowledge of the fact that a child of tender years may be expected to act upon childish impulses.

The Court: I will refuse that instruction.
Mr. Greear: Exception.

INSTRUCTION NO. D-11 (Refused).

The Court instructs the Jury that the primary duty of caring for the child of tender years is on the parents or their representative who has the immediate custody of the child.

Therefore, where such child is traveling on a bus in the care of his parent, the owner of the bus, that is, the carrier, through its employees, has the right to presume and to rely on the presumption that the parent will take care of the child as the natural love of the parent would prompt him or her to exercise under the circumstances.

page 136 } The Court: I am going to refuse that instruction.

Mr. Greear: Exception.

Thereupon, the instructions as set out above, granted by the Court, were read to the Jury by the Court.

Whereupon, the case was argued by counsel, and thereupon, the Jury retired to its room to consider the case, and returned into the Court having found the following verdict:

"We, the Jury, find \$3,000.00 damages for the Plaintiff against the Defendant. A. J. Horton, Foreman."

Mr. Greear: We desire to make a motion to set the verdict aside.

The Court: All right, when do you want to be heard?

Mr. Greear: Any day next week would suit me.

The Court: All right.

MOTION TO SET ASIDE THE VERDICT.

Filed: October 27, 1949.

The Defendant, Tri-State Coach Corporation, now comes and moves the Court to set aside the verdict of the Jury rendered in this case, by which the Plaintiff was
page 137 } granted damages in the sum of Three Thousand (\$3,000.00) Dollars and for grounds of said motion assigns the following:

1. The verdict of the Jury is contrary to the law.
2. The verdict of the Jury is contrary to the evidence and not supported by the evidence.
3. The verdict of the Jury is contrary to the law and the evidence.
4. The Court erred in overruling the motion of the defendant to strike the evidence of the plaintiff, which motion was made at the conclusion of the plaintiff's evidence, and at the conclusion of all the evidence in the case.
5. The Court erred in giving Instructions P-1 and P-3 offered on behalf of the plaintiff and given over objections of the defendant.
6. The Court erred in refusing Instructions D-1, D-2, D-4,

D-5, D-7, D-8, D-10 and D-11 offered on behalf of the defendant.

And for other grounds to be assigned at bar.

(Signed) FRED B. GREER, Attorney.

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STIPULATION.

It is stipulated between attorneys for both parties that the foregoing stenographic report of testimony and other incidents of the trial therein, shall be considered in lieu of formal Bills of Exception, and that all questions raised, all rulings thereon, all exceptions thereto, and the grounds of such exceptions, respectively, as shown by said report of testimony, and other incidents of the trial therein, may be relied upon by either or both parties, in the Supreme Court of Appeals, without taking separate Bills of Exception as to each point raised and excepted to.

This the 8 day of December, 1949.

R. C. SHANNON,

Counsel for Plaintiff.

GREER, BOWEN, MULLINS, &

WINSTON,

Counsel for Defendant.

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JUDGE'S CERTIFICATE.

I, George Morton, Judge of the Circuit Court of Wise County, Virginia, who presided over the foregoing trial of Thomas C. Stidham, Administrator of the Estate of Lonnie Thomas Stidham, Deceased, Plaintiff, v. Tri-State Coach Corporation, Defendant, do certify that the foregoing, together with the exhibits therein referred to, is a true and correct copy and report of all the evidence, together with all the motions, objections and exceptions on the part of the respective parties, the action of the Court with respect thereto, all the instructions offered, granted and refused by the Court, and the objections and exceptions thereto; and all other incidents of the said trial, with the motions, objections and exceptions of the respective parties as therein set forth.

And I further certify that the attorney for the Plaintiff has had reasonable notice, in writing, given by counsel for the Defendant, of the time and place when the foregoing report of the testimony, exhibits, instructions, exceptions and other

incidents of the trial would be tendered and presented to the undersigned for signature and authentication, and that the said report was presented to me on the 8th day of December, 1949, within less than sixty days from the entry of the final judgment in said cause.

page 140 } Given under my hand this the 8th day of December, 1949.

GEORGE MORTON (Seal)
Judge of the Circuit Court of Wise County,
Virginia.

page 141 } CLERK'S CERTIFICATE.

I, Chas. I. Fuller, Deputy Clerk of the Circuit Court of Wise County, Virginia, do hereby certify that the foregoing is a copy of the report of testimony, instructions, exceptions and other incidents of the trial, in the case of Thomas C. Stidham, Administrator of the Estate of Lonnie Thomas Stidham, Deceased, Plaintiff, v. Tri-State Coach Corporation, Defendant, and that the original thereof and one copy, together with the original exhibits, duly authenticated by the Judge of said Court, were lodged and filed with me as Clerk of the said Court, on the 10th day of December, 1949.

CHAS. I. FULLER,
D. Clerk of the Circuit Court of Wise
County, Virginia.

page 142 } CLERK'S CERTIFICATE.

Virginia,
Clerk's Office of the Circuit Court:

I, Allene H. Smith, a Deputy for J. A. Gardner, Clerk of the Circuit Court of Wise County in the State of Virginia, do hereby certify the foregoing to be a true transcript of the record in the case of Thomas C. Stidham, Administrator of the Estate of Lonnie Thomas Stidham, deceased, *against* Tri-State Coach Corporation as appears from the original records on file in this office. As to original exhibits accompanying this record, each of them has been identified by initials "J. A. G.", by the Clerk of this Court.

Supreme Court of Appeals of Virginia

I further certify that Mr. R. C. Shannon, attorney for the plaintiff has had due notice of the transcribing of this record for the purpose of an Appeal.

Given under my hand this the 13 day of January, 1950.

J. A. GARDNER, Clerk.
by ALLENE H. SMITH,
Deputy Clerk (Seal)

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